


आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1 st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- qaahmedabad2@gmail.com		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-60/OA/2019

आदेश की तारीख / Date of Order : 18.08.2020

जारी करने की तारीख / Date of Issue : 18.08.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-19/2020-21

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where the duty or penalty alone is in dispute.

(Amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा



हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियाँ में दाखिल , उसकी भी उतनी ही ,गई हो की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की उनमें से कम से क) प्रतियाँ संलग्न की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रुपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

-कारण बताओ सूचना:

Subject- Proceedings initiated vide Show-Cause-Notice - STC/15-60/OA/2019 dated 11.11.2019 issued to M/s P C Snehal Construction Co, 9 floor, City Center, CG Road, Navrangpura, Ahmedabad 380 009.



BRIEF FACTS OF THE CASE:

M/s P C Snehal Construction Co, 9 floor, City Center, CG Road, Navrangpura, Ahmedabad 380 009 ('hereinafter referred to as the 'assessee') are engaged in providing Works Contract Services and holding a Service Tax Registration No AACFP6233AST001.

2 During the course of audit of the assessee for the period from April, 2014 to June 2017, it was observed that the assessee had availed the benefit of Notfn No 25/2012-S.T dated 20.6.2012, as amended, for the projects/work orders tabulated below:

(Rs. In actual)

TABLE-A

No	Project/work Order	Project Income				Total Service tax payable
		2014- 15	2015-16	2016-17	2017-18 (April-June 2017)	
1	AMC-Auditorium (Rajpath) Income.	70794297	93846078	106977309	0	1536 1781
2	AMC Tagore Hall Income Account	5827211	1155295	232220	232220	670199
3	Gujarat Tourism Dakor (PCK-II)	27624676	22970644	2119798 1	0	3969940
4	Gujarat Tourism - Dakor Work	39894376	6654542	4769546	0	2644514
5	Tourism Corporation of Gujarat Ltd (JAGANA)	8949575	0	0	0	442467
6	Gujarat Tourism Museum Interior Work	0	1347764	0	0	78170
7	Gujarat Tourism - Bindu Sarovar Work	0	661518	0	0	38368
8	Tourism Corporation of Gujarat Ltd (JAGANA)	0	3911326	0	0	226857
9	RIDCOR Multi level Parking:Gandhi Maidan	4381786	84177632	15786313	0	6046117
10	RIDCOR - Underground Parking (Hathiwala Park)	12600633	49944969	16698683	0	4521704
11	The Registrar, Gujarat Vidyapith	630612	0	0	0	31177
12	MS University	0	12937100	14744208	733171	2938240
13	M S University (Stadium)	0	0	0	7493788	449627
14	Mahagujarat Medical Society Building	0	4368958	380157	0	276209
15	Rean Watertech Pvt Ltd (Income)	0	20000000	50025700	0	4161542
16	PIU, Dediypada	0	0	0	5126450	307587
	Total	170703166	30197582	230812117	1358562	
	Service Tax payable	8655638	18127617	14522666	858580	42164501

3. As it appeared that the assessee had not discharged the service tax leviable on the income earned on the above project works, an objection was communicated to the assessee on 11.10.2019. The assessee, under their communication dated 23.10.2019 had informed that they were exempted from payment of service tax for the work done by them on the above projects, as envisaged under clauses 12, 12A and 29 of Notfn No.25/2012-ST dated 20.6.2012, as amended.

4. It had been further contended by the assessee under their letter dated 23.10.2019 that for the period till 2015-16, some information, details, documents and records were provided by them to the department and a show cause notice was issued from F.No. 1407/0&A/P.C./2017-18 dated 17.5.2017. It is to mention that preventive investigation was related to specific information/issue and does not cover the scrutiny/verification of the entire documents maintained by the assessee. An Audit covers the scrutiny and verification of the entire records maintained by the assessee and is comprehensive in nature. Accordingly, it appeared that the notice issued on 17.5.2017 cannot be said to cover the scrutiny and verification of records of the assessee for the same period made by the Audit Officers. Hence, it appeared that the contention of the assessee was not justified. The assessee had cited the case law of Nizam Sugar Factory reported at 2006 (197) EL T

465(SC) saying that a second notice on similar facts could not be taken as suppression of facts. It is already seen that the audit was a comprehensive scrutiny and verification of the records maintained by the assessee. The notice issued on 17.5.2017 was for a specific issue/information. Accordingly, the proposed notice cannot be considered as a second notice on the same set of facts and period as provided in the notice dated 17.5.2017. It, therefore, appeared that audit being a comprehensive verification/scrutiny of records maintained by the assessee, the department had no prior knowledge of the facts on which the present notice was being issued. Hence, it appeared that the ingredients of suppression of facts are invocable in the present case. Accordingly, the ruling in the case of Nizam Sugar Factory cited by the assessee would not apply to the facts of the present case. A letter was written to the Deputy/Assistant Commissioner (Prev), CGST & Central Excise, Ahmedabad North Commissionerate on 25.10.2019. The Commissioner of Central Tax, Ahmedabad North Commissionerate in his letter No STC/04- 27/Prev/Gr. IV/PC Snehal Cons/2015-16 dated 11.11.2019 has stated that the preventive wing conducts investigation on specific information/intelligence and on specific issues and the investigation was carried out on the basis of records/documents provided by the assessee. The show cause notice dated 17.5.2017 was issued for specific issue, based on a specific information on which the preventive wing conducted the investigation. However, the conduct of audit covers a comprehensive and thorough scrutiny and verification of all records maintained by the assessee. Therefore, it cannot be said that the notice issued on 17.5.2017 had the same set of facts/issue as done by the Audit Officers during the course of a comprehensive scrutiny/verification. Accordingly, the set of facts and issues taken up for investigation by the Preventive wing on the basis of which the show cause notice was issued on 17.5.2017 cannot be said to be identical to the set of facts available during the comprehensive audit conducted by the Audit Officer.

5. The relevant text to Notification No 25/2012-ST dated 20.06.2012, as amended, is reproduced below:

"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal;

12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: Provided that nothing contained in this entry shall apply on or after the 1st April, 2020; Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f. 1.3.2016.

29. Services by the following persons in respective capacities -

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;"

Project-wise discussions in respect of each of the project is detailed below:

Sr No 1 and 2 of the above table: Construction of AMC - Auditorium, Behind Rajpath Club and Renovation of AMC Tagore Hall

The assessee had claimed exemption under clause 12A(a) and (b) to Notfn No 25/2012-ST, as amended. It was stated that they have provided services to the Ahmedabad



Municipal Corporation, a Government/Local Authority, for construction of an auditorium building behind Rajpath club, Ahmedabad against a Work order dated 27.12.2013. The services provided to a local authority were exempted and covered under clause 12A(a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended. They had submitted a certificate dated 21.8.2018 given by the Ahmedabad Municipal Corporation in Form 3(A) which stated that the work pertained to civic amenities, non-commercial and public Utility infrastructure project, for the construction of the auditorium. In the other case, the assessee had provided services to the Ahmedabad Municipal Corporation for the renovation, beautification and painting of Tagore Hall against a letter of intimation dated 1.2.2013.

8. In the instant case, the assessee had provided services to the Ahmedabad Municipal Corporation in respect of the construction of the auditorium and renovation of Tagore hall for which contract have been entered on 27.12.2013 and 1.2.2013, respectively. On going through the website of Ahmedabad Municipal Corporation, the rent for the auditorium was stated to be ranging from Rs 20,000/- to Rs 40,000/- per day and the rent for Tagore hall was ranging from Rs 5,000/- to Rs 8,000/-. Accordingly, it appeared that the auditorium/renovation of Tagore hall were not meant predominantly for use other than commerce, industry or any other business or profession as envisaged in clause 12A(a) to Notfn No 25/2012-ST dated 20.6.2012, amended. As seen from the rent charged/proposed to be charged, it appeared that the auditorium/Tagore hall was meant for commercial or business use. Further, there was no evidence that they are structures meant predominantly for use as an educational, a clinical, or an art or cultural establishment. Accordingly, the condition to clause 12A(a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended, are not fulfilled in this case. Hence, the exemption benefit appeared to be not available for construction of auditorium/renovation of Tagore hall to the assessee, under Notfn No 25/2012-ST dated 20.6.2012, as amended.

Sr No 3 to 8 of the above table: Services provided to Tourism Corporation of Gujarat Limited in respect of various works

9. The assessee had claimed exemption under clause 12A(a) and (b) to Notfn No 25/2012-ST, as amended. It was stated that they had provided services to the Tourism Corporation of Gujarat Limited, which is a state government Unit, for development of their facilities and welfare of pilgrims/tourists, under different Work Orders/letters (Letter No PE/Dakor pa-2/Cont/2013 dated 5.4.2013, No PE/Dakor/Contractor/2012 dated 3.7.2012, No PE/Vay side-Jagana/Contractor/2013 dated 16.2.2013, No PE/Sidhpur/Museum interior/cont/2011 dated 27.2.2012, No Pe/Siddhpur/2010 dated 1.2.2010), as seen from the table above. The services were not for commercial purposes.

10. "Government Authority" has been defined in the notification as under:

"governmental authority" means an authority or a board or any other body;

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

11. Schedule 12 to the Constitution of India read with Article 243W entrusts the following activities to a municipality:

- a) Urban planning including town planning.
- b) Regulation of land-use and construction of buildings.
- c) Planning for economic and social development.
- d) Roads and bridges.
- e) Water supply for domestic, industrial and commercial purposes.
- f) Public health, sanitation conservancy and solid waste management.
- g) Fire services.
- h) Urban forestry, protection of the environment and promotion of ecological aspects.



- i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- j) Slum improvement and upgradation.
- k) Urban poverty alleviation.
- l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- m) Promotion of cultural, educational and aesthetic aspects.
- n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- o) Cattle pounds; prevention of cruelty to animals.
- p) Vital statistics including registration of births and deaths.
- q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- r) Regulation of slaughter houses and tanneries.

12. It appeared that though M/s Tourism Corporation of Gujarat Limited was established by the Government of Gujarat, the purpose was to promote tourism. The purpose is not for carrying out any functions entrusted to a municipality under Article 243W, as stated above. It appeared that Tourism Corporation of Gujarat Limited has not carried out any functions as detailed under Article 243W.

13. Accordingly, it appeared that the services provided by the assessee to Tourism Corporation of Gujarat Limited are not meant predominantly for use other than commerce, industry or any other business or profession. Further, they were also not structures meant predominantly for use as an educational, a clinical or an art or cultural establishment. It appeared that the services were meant for commercial or business use. Accordingly, the conditions to clauses 12A(a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended, were not fulfilled in this case. Hence, the exemption benefit appeared to be not available for services provided to Tourism Corporation of Gujarat Limited, under Notfn No. 25/2012-ST dated 20.6.2012, as amended.

Sr. No. 9&10:

Services provided to RIDCOR in respect of work pertaining to Multi Level Parking at Gandhi Maidan, Jodhpur & Underground parking at Hathiwala Park, Udaipur.

14. The assessee had stated that the Work was awarded by the Road and Infrastructure Development Company of Rajasthan Limited ('RIDCOR') under Letter of Acceptance No RIDCOR/PRJ/TEC/CCO-5 & 7/2013 dated 26.7.2013 and No RIDCOR/PRJ/TEC/CCO-5 & 7/2013 dated 30.9.2013 for construction of multi level parking/underground parking for the utility of general public, respectively. Hence, they were not liable to pay service tax. It had been claimed that RIDCOR is a Government Authority.

15. In the instant case, it appeared from the documents available that RIDCOR is a joint venture of the Government of Rajasthan and M/s IL&FS. Both of them are having 50% control. The Government does not have a participation of more than 90% by way of equity or control in RIDCOR. Accordingly, it appeared they do not fall with the ambit of 'Government authority'. Hence, it appeared that they would not be entitled to the exemption benefit under clause 12A (a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

Sr No 11: Works Contract services provided to the Registrar, Gujarat Vidyapith

16. The assessee had stated that they had been issued Work Order Nos 203 and 204, both dated 17.12.2014 by the Registrar, Gujarat Vidyapith for construction of toilet blocks of GF, FF and SF of Adivasi Sansodhan and Talim Kendra. They further stated that Gujarat Vidyapith is a deemed university, founded and governed by the University Grant Commission, under the Union Ministry of Human Resource Development, New Delhi. They had also stated that it was founded by Mahatma Gandhi and therefore, was a historical monument. Accordingly, they were liable for the exemption under Notfn No. 25/20 12-ST dated 20.6.2012, as amended.

In the instant case, it is to be noted that there is no evidence shown by the assessee that



the Government has 90% or more of participation having equity or control over Gujarat Vidyapith. It is a not a Central/State University. Further, Gujarat Vidyapith is not in the list of monuments of national importance in the website of the Archaeological Survey of India. Accordingly, it appeared they do not fall with the ambit of 'Government authority'. Hence, it appeared that they would not be entitled to the exemption benefit under clause 12A (a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

Sr No 12 & 13: Works Contract service provided to MS University

18. The assessee had been issued a Letter No CD/2276 and Work Order No CD/2017 in December 2016 by the Maharaja Sayajirao University of Baroda for renovation of Ladies Hostel and New Building in the University Campus and construction of multipurpose indoor stadium. Maharaja Sayajirao University is a deemed university, founded and governed by the University Grants Commission, under the Union Ministry of HRD, New Delhi. Moreover, the University is more than 100 years and is a historical monument. Therefore, they are eligible for the exemption under Notfn No 25/2012-ST, dated 20.6.2012, as amended.

19. In the instant case, it is to be noted that there is no evidence shown by the assessee that the Government has 90% or more of participation having equity or control over the University. It is a not a Central/State University. Further, the University is not in the list of monuments of national importance in the website of the Archaeological Survey of India. Accordingly, it appeared they do not fall with the ambit of 'Government authority'. Hence, it appeared that they would not be entitled to the exemption benefit under clause 12A (a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

Sr No 14: Mahagujarat Medical Society Building Construction

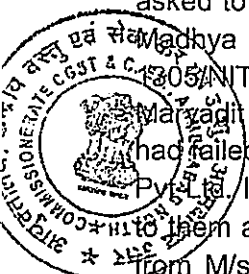
20. The assessee had stated that a Work Order dated 21.1.2015 was issued by the Mahagujarat Medical Society. Since the services were provided to the local authority and the agreement was entered into before 1.3.2015, they were exempted from payment of service tax under clause 12A(a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

21. In the instant case, on going through the letter submitted by the assessee, it was seen that the date of Work Order is 25.3.2015 and not 21.1.2015, as claimed by the assessee. It, therefore, appeared that the agreement was entered after 1.3.2015. Accordingly, it appeared that the benefit is not available to the assessee under the proviso to clause 12A to Notfn No 25/2012-ST dated 20.6.2012, as amended.

Sr No 15: Rean Watertech Pvt Ltd (Income)

22. The assessee had stated that the Work Order No 1305/NIT-12/D & M/MPJNM/2015 was issued by the Madhya Pradesh Jal Nigam Maryadit (a Government of Madhya Pradesh Undertaking) for Water Supply System Balaghat project. The Works fall under the clauses 12(e) to the Notfn No 25/2012-ST dated 20.6.2012, as amended and therefore, they were eligible for the exemption.

23. An observation was raised on 11.10.2019 to the assessee seeking certain clarification in respect of the income of Rs 2,00,00,000/- earned in 2015-16 and Rs 5,00,25,700/- in 2016-17 from M/s. Rean Watertech Pvt Ltd which was shown in the note to the Financial statements for these years. The assessee under their reply dated 23.10.2019 have stated that they had been asked to proceed for carrying out the work by Madhya Pradesh Jal Nigam Maryadit (a Govt of Madhya Pradesh Undertaking) for Water Supply System project at Balaghat. A letter No 1305/NIT-12/D&M/MPJNM/2015 dated 26.05.2015 issued by Madhya Pradesh Jal Nigam Maryadit to Mis Bengal Tools Ltd & the assessee, was submitted. It appeared that the assessee had failed to provide documents and reasons for receiving the income from M/s Rean Watertech Pvt Ltd. Instead, they had cited the Work Order of Madhya Pradesh Jal Nigam Maryadit issued to them and M/s Bengal Tools Ltd. It appeared that when income had been shown as received from M/s Rean Watertech Pvt Ltd, there is no link established between the income and the Work Order of Madhya Pradesh Jal Nigam Maryadit. Accordingly, it appeared that the assessee



had failed to provide evidence in terms of documents/Work Order for receipt of income from M/s' Rean Watertech Pvt Ltd. Accordingly, it appeared that the exemption claimed by them under Notfn No 25/2012-ST dated 20.6.2012, as amended would not be eligible.

Sr No 16: PIU, Dediypada

24. The assessee had stated that they had received work, awarded by the Chief Engineer, PIU, Gandhinagar for upgradation of community health centre at Dediypada. They had further stated under their letter dated 23.10.2019 that the PIU Gandhinagar had issued a letter to proceed with the work under their letter No PIU/ACs/CHCI/Narmada/ 3916/2017 dated 22.9.2017. It was stated that they were eligible for the exemption under clause 12A(b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

25. In the instant case, on going through the letter dated 22.9.2017, it appeared that PIU, Gandhinagar had asked the assessee to proceed only on 22.9.2017. It, therefore, appeared that the agreement was entered after 1.3.2015. Accordingly, it appeared that the benefit is not available to the assessee under the proviso to clause 12A to Notfn No.25/2012-ST dated 20.6.2012, as amended.

26. From the above discussions, it appeared that in none of the 16 cases, the assessee was eligible for the exemption benefit under any of clauses to Notfn No 25/2012-ST dated 20.6.2012, as amended, as claimed by them. It is seen that the activities do not find mention in any of the provisions of Section 66D of the Act. It, therefore, appeared that they do not fall under the negative list and therefore, are taxable services. Accordingly, it appeared that the services provided by the said assessee are taxable and liable for payment of service tax. The activity appeared to be taxable as defined under Section 65B(51) of the Act.

27. From the foregoing facts and discussions, it appeared that the said assessee had contravened the provisions/conditions of:

- Clauses 12A to Notfn No 25/2012-ST dated 20.6.2012, as amended as they have failed to properly avail the exemption;
- Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they have failed to pay service tax at the rate specified in Section 66B in such manner and within such period as may be prescribed;
- Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

28. It appeared that the said assessee had not disclosed to the revenue that they had provided services to their customers on which income was earned by them. They had not informed that they were providing a taxable service falling within the definition of 'service' as envisaged under the provisions of Section 65B(44) of the Act. They had shown the entire consideration as income in their financial records but had not shown the same consideration as receipt in their ST3 returns before the audit objection was detected. It appeared that had wrongly availed the exemption of Notfn No 25/2012-ST dated 20.6.2012, as amended even though they knew they were ineligible for the exemption.

29. It, therefore, appeared that they had suppressed the material facts of receiving a consideration on the services provided to them to their customers in their ST3 returns with an intent to evade the payment of service tax within the ambit of Section 65B(44) of the Act. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' in this case.

As tabulated above, it was seen that the service tax totally amounting to Rs 4,21,64,30/- covering the period from April 2014 to June 2017 in 16 cases is liable to be demanded and recovered from the assessee, under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years as there is a case of suppression of facts with an intent to evade the payment of service tax. It appeared that the assessee had not paid the service tax as discussed above and therefore, interest is to be charged and recovered from the



assessee under the provisions of Section 75 of the Act. It appeared that by the act of not disclosing the amount of consideration received on account of the services provided by the said assessee and by wrongly availing the exemption benefit under Notfn No 25/2012-ST dated 20.6.2012, as amended, they had suppressed the material facts with an intention to evade the payment of service tax, as discussed above and it, therefore, appeared that the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act.

31. Thus, it appeared that the assessee has suppressed the said facts with intent to evade payment of service tax. Moreover, in the present regime of liberalization, self assessment and filing of returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such non payment of service tax only during audit checks.

32. In the case of *Mahavir Plastics versus CCE Mumbai*, 2010 (255) EL T 241, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of *Lalit Enterprises Vs. CST Chennai*, it is held that extended period is evocable when department came to know of Service charges received by appellant on verification of his accounts. All the above mentioned acts of contravention of the provisions of the Finance Act and Rules framed thereunder on the part of the assessee have been committed with intent to evade payment of duty and thereby they have rendered themselves liable for penalty under Section 78(1) of the Act.

33. M/s P C Snehal Construction Co, 9 floor, City Center, CG Road, Navrangpura, Ahmedabad 380 009, was therefore, called upon to show cause as to why:

- (i) service tax amounting to Rs 4,21,64,501/- (Rupees Four crores twenty one lakhs sixty four thousand five hundred one only), as tabulated in the show cause notice, should not be demanded and recovered from them, under the proviso to Section 73(1) of the Act;
- (ii) Interest should not be charged and recovered from them under the provisions of Section 75 of the Act on the proposed demand at (i) above;
- (iii) Penalty should not be imposed on them under the provisions of Section 78(1) of the Act on the proposed demand at (i) above;

WRITTEN SUBMISSIONS:

34. The assessee has submitted their written submissions on 17.06.2020 and 03.07.2020, wherein, they inter alia stated as under:

A. THE ASSESSEE IS ELIGIBLE FOR EXEMPTION FROM PAYMENT OF SERVICE TAX.

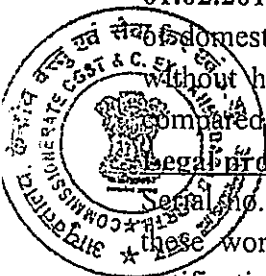
1. Ahmedabad Municipal Corporation

Facts:

The assessee provided service to Ahmedabad Municipal Corporation, a local authority, as defined in clause (e) of Article 243P of the Constitution of India, for construction of auditorium and renovation of Tagore hall. Work orders were issued on 27.12.2013 and 01.02.2013 respectively. Auditorium and Tagore hall are given for use to public for celebration of domestic, social or religious function. These amenities are supply to public at nominal rent without having intention of earning profit. Charges recovered from public are very nominal compared to heavy charges collected by private organizations for providing such amenities.

Legal provisions:

Serial no. 12A(a) of notification no. 25/2012-ST, as amended, is not applicable in respect of these works as it has commenced prior to 1st March, 2016, as envisaged under proviso to notification no. 9/2016-ST dated 01.03.2016. Therefore the assessee is eligible for exemption from payment of service tax under serial no. 12(a) of notification no.25/2012-ST dated 20.06.2012.



In arguendo also the Show cause notice refers to the rent charged by the civil structures rather than referring to the certificate issued by the Ahmedabad Municipal Corporation. The work of deciding whether the purpose is for public utility or not is of the Municipal Corporation to decide which a constitutional authority is and it through its duly issued certificate has already decided that the purpose is civic amenities and public utility. The collection of rent is the purview of the Ahmedabad Municipal Corporation.

Judicial pronouncement:

Hon'ble Rajasthan High Court in the case of **B.B. Nirman Sahakari Samiti v. State of Rajasthan** AIR 1979 Raj. 209 held that

public utility means any work, project which is going to be useful to the members of the public at large. The public benefit aimed at or intended to be secured need not be to the whole community but to a considerable number of people.

Hon'ble CESTAT in **BG Shikre Construction v. Commissioner of Central Excise** in Appeal No: ST/629/2011 held that:-

In American Law, the word Public facility has been defined as under:-

Public facility means the following facilities owned by a State or local government, such as: -

(a) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(b) Any other Federal and street road or highway

(c) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

Conclusion:

This means auditorium and Tagore hall were not meant for commercial or business use. Auditorium and Tagore hall are used for promoting cultural activities in terms of item 12, 13 and 17 of Schedule 12 to the Constitution of India read with Article 243W. Also both Tagore hall and Pandit Deendayal Hall are listed as community halls on the website of AMC. Therefore Service Tax is not payable on the same.

2. Tourism Corporation of Gujarat Limited

Facts:

The assessee executed works entrusted by Tourism Corporation of Gujarat Limited, a State Government Company comprising 100% equity by Government of Gujarat. The assessee executed works for providing tourist facilities at Dakor, a holy pilgrimage of Hindu for worship of Lord Krishna having historic importance of the temple, work of museum and infrastructure facilities at Bindu Sarovar at Siddhpur having religious importance for Hindus for performing spiritual activities such as "Tarpan Ceremony," providing way side amenities for tourist at Jagana. These facilities are for and in the interest of mass as a whole. This works are not used for commerce, industry or any business of profession. The work orders were issued prior to April-2013. The SCN already accepts the fact that Tourism Corporation of Gujarat Limited is a governmental authority and is established for purpose of tourism.

Legal provisions:

Serial no.12A(a) of notification no. 25/2012-ST, as amended, is not applicable in respect of these works as it has commenced prior to 1st March, 2016, as envisaged under proviso to notification no. 9/2016-ST dated 01.03.2016. Item 3 of Schedule 12 to the Constitution of India read with Article 243W makes planning for economic and social development of a region as a function of municipality.

Judicial pronouncement:

The Hon'ble Rajasthan High Court in case of **Ram Chandra Kasliwalvs State Of Rajasthan And Ors.** 2004 SCC OnLine Raj 355 held that tourism is necessary for the economic development of a region.

Entry 3 in schedule 12 of the Indian Constitution includes social and economic development hence, the Tourism Corporation of Gujarat Limited falls under serial 2(s) of notification 25/2012-ST dated 20.06.2012 making it a Governmental Authority.

Conclusion:



Therefore the assessee is eligible for exemption from payment of service tax under serial no. 12(a) of notification no.25/2012-ST dated 20.06.2012 as the function performed by the service recipient governmental authority is the function as enshrined in schedule 12 to the Indian Constitution. In arguendo the service provided is also exempt by entry 12A of notification 25/2012- ST though the same is not applicable in this case. Also the ownership of the lands also belongs to the Government of Gujarat and hence whatever work is done on it is also exempt under entry 29(h) of notification no.25/2012-ST dated 20.06.2012. Also the entities where the construction has taken place are religious places and hence exemption under entry 13(c) of notification no.25/2012-ST dated 20.06.2012 is also available.

3. Road and Infrastructure Development Company of Rajasthan Ltd.(RIDCOR)

Facts:

The assessee executed work entrusted of Road and Infrastructure Development Company of Rajasthan Ltd.(RIDCOR) for construction of multilevel parking and underground parking for use of general public. RIDCOR is a Government Company. The works were civil structure and meant for use by general public for use for parking. Civil structure was not meant for commerce or business purpose with intention to earn profit out of construction of multilevel parking and underground parking. **Work orders were issued in July and September 2013. RIDCOR has 50% control by Rajasthan State Govt. and the remaining 50% by ILFS transport which in turn is held by ILFS, and ILFS is held more than 40% by Govt. of India. Meaning thereby more than 90% control in RIDCOR is governmental Authority. During preventive proceedings, the department has communicated with RIDCOR and RIDCOR had replied that they are Governmental Authority.**

Legal provisions:

Serial no. 12A(a) of notification no. 25/2012-ST, as amended, is not applicable in respect of these works as it has commenced prior to 1st March, 2016, as envisaged under proviso to notification no. 9/2016-ST dated 01.03.2016.

Judicial pronouncement:

State of Mysore v. AllumKaribasappa 1974 (2) SCC 498 The word "control" suggests check, restraint or influence. Control is intended to regulate and hold in check and restrain from action.

Conclusion:

Therefore the assessee is eligible for exemption from payment of service tax under serial no. 12(a) of notification no.25/2012-ST dated 20.06.2012. Since RIDCOR is being controlled by Government by more than 90% hence it falls in the definition of Governmental Authority under serial 2(s) of the notification no.25/2012-ST dated 20.06.2012. The notification clearly distinguishes between equity and control and in the present case control has been exercised.

4. Gujarat Vidyapith- Adivasim Sansodhan & Talim Kendra

Facts:

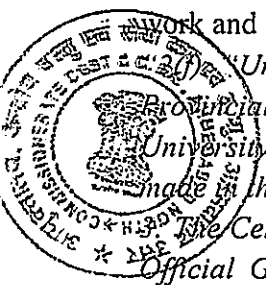
The assessee executed civil work for construction of toilet blocks of Adivasi Sansodhan & Talim Kendra and renovation and repairing of existing ground floor of Adivasi Sansodhan & Talim Kendra of Gujarat Vidyapith.

The Adivasi Sansodhan and Talim Kendra are a Govt. of Gujarat Initiative and it is an autonomous institution under Gujarat Vidyapith and was set up in 1962. **Work orders for above said two works were issued in December 2014.**

Gujarat Vidyapith was founded in October 1920, by Father of Nation, Mahatma Gandhi. It maintains its commitments to Gandhian ideals, human studies, social service and development work and also considerably modernized in its structure and curriculum.

"University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a university, shall be



deemed to be a University for the purpose of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2."

During the relevant period they had paid the service tax for the work done for Gujarat Vidhyapith, they had claimed the refund of such service tax due to amendment in the law. Department had also issued show cause notice and enquired with Gujarat Vidhyapith. Copy of the letter of Gujarat Vidhyapith, show cause notice for refund, order of adjudicating authority and order of commissioner appeals granting refund along with refund sanctioning order is attached herewith. (Annexure-C)

Legal provision:

Serial no. 12A(a) of notification no. 25/2012-ST, as inserted under notification no. 9/2016-ST dated 01.03.2016 is not applicable in respect of these works as it has commenced prior to 1st March, 2016, as envisaged under proviso to notification no. 9/2016-ST dated 01.03.2016. Therefore the assessee is eligible for exemption from payment of service tax under serial no. 12(a) of notification no. 25/2012-ST dated 20.06.2012.

Conclusion:

Adivasi Sansodhan and Talim Kendra is a Govt. of Gujarat Initiative and hence it is a Governmental Authority in terms of para 2(s) of notification 25/2012-ST and therefore it is eligible for exemption under serial no. 12(a) of notification 25/2012-ST.

5. M.S. University

Facts:

M.S. University offers undergraduate, graduate, post graduate and doctoral programs. It is funded and governed by the University Grant Commission under Union Ministry for Human Resources Development at New Delhi. The M.S. University of Baroda is established under the The Maharaja Sayajirao University of Baroda Act, 1949. The assessee executed work of special repairs etc. and RCC Rolls for ladies hostel campus along with other works and construction of Multipurpose Indoor Stadium at Union Pavilion of M.S. University. M.S. University is engaged in educational activities and conducting various courses approved by University Grant Commission, New Delhi. The assessee executed above said civil works for use of students staying in ladies hostel and for students to use Multipurpose Indoor Stadium.

M.S. University established in 1949. M.S. University is an "University" in terms of Section 2(f) and 3 of University Grants Commission Act, 1956. The University Grants Commission Act, 1956 enacted by the Parliament. It came into force from 5th November, 1956. Section 2(f) and 3 of University Grants Commission Act, 1956 provided as under.

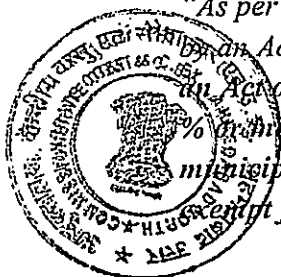
"2(f): "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

3: The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a university, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2."

Judicial pronouncement:

Honorable High Court of Patna in case of Sharpoorji Pagoonji & Pvt. Ltd. Vs. Commissioner, Customs, Central Excise and Service Tax, Patna [2016-TIOL-556-HC-PATNA-ST] held as under:

"As per definition Governmental Authority means an authority or board or any other body set up by or under an Act of Parliament or State Legislature is a Government Authority. The authority set up by or under an Act of Parliament or State Legislature is not and can not be made subject to condition of 90% share participation by way of equity and control to carry out any functions entrusted to a municipality under Article 243W of the Constitution. Construction activity undertaken is eligible for exemption from payment of service tax in terms of notification no. 25/2012-ST dated 20.06.2012."



Conclusion:

M.S. University is a Governmental authority as it is established under a separate act of its own. M.S. University is a Governmental Authority in terms of Para 2(s) of notification no.25/2012-ST dated 20.06.2012 and judicial pronouncement cited above.

This activity is not meant for commerce or business with intention to earn profit. The assessee eligible for exemption from payment of service tax under serial no.12 of notification no. 25/2012-ST.

6. Maha Gujarat Medical Society**Facts:**

The assessee executed work for Maha Gujarat Medical Society. They are engaged in providing medical facilities under ayurvedic system through Thakorbbhai Global Ayurvedic Hospital.

Conclusion:

This activity is not meant for commerce or business with intention to earn profit. The assessee eligible for exemption from payment of service tax under serial no.12(c) of notification no. 25/2012-ST. The show cause states that the exemption is not applicable as it is after 1/3/2015 but the Ld. Commissioner failed to consider that the same is effective from 01.03.2016 therefore the same is not applicable.

7. Rural Water Supply Scheme for Madhya Pradesh Jal Nigam Maryadit**Facts:**

The assessee executed work for Rural Water Supply Scheme for Madhya Pradesh Jal Nigam Maryadit, a Government of Madhya Pradesh undertaking, which undertakes work of water supply schemes for Madhya Pradesh. Amount received from M/s. Rean Water Tech Pvt. Ltd. is for work of water supply scheme.

Conclusion:

The assessee is eligible for exemption for payment of service tax under serial no.12 (e) read with 29(h) of notification no.25/2012-ST dated 20.06.2012.

8. Community Health Center at Dediypada from Project Implementation Unit, Gandhinagar**Facts:**

The assessee received work order for construction of Community Health Center at Dediypada from Project Implementation Unit, Gandhinagar vide order no.PIU/ACS/CHC/ Narmada/ 3916/2017 dated 22.09.2017.

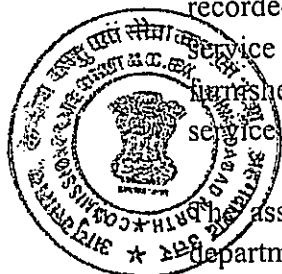
The provisions of serial number 12A of notification no.25/2012-ST, inserted vide notification no.9/2016-ST (a) (iv), with effect from the 1st March, 2016, was not valid after 30.06.2017.

Conclusion:

The work order issued on 22.09.2017 shall have to be governed by Central Goods and Service Tax Act, 2017 and State Goods and Service Tax Act, 2017. Therefore disallowing of exemption in respect of work of Project Implementation Unit, Gandhinagar is void and *ultra vires*.

B. SUPPRESSION OF FACTS NOT INVOLVED AND EXTENDED PERIOD OF FIVE YEARS NOT APPLICABLE.

- i. Preventive Wing of Service Tax Department issued summons to the assessee and recorded statement on 16.09.2016. The assessee furnished details of works contract service rendered to various service recipients during 2011-12 to 2015-16. The assessee furnished details of service recipients to the Preventive Wing along with following service recipients.



The assessee submitted before Preventive Wing of Service Tax Department when the department recorded statement of assessee that assessee was eligible for exemption from

payment of service tax under notification no. 25/2012-ST dated 20.06.2012. Copy of statement recorded by Preventive Wing dated 16.09.2016 is enclosed as Annexure A.

- iii. The assessee for Gujarat Vidhyapith had claimed for refund and the same has been granted and the office of the Assistant Commissioner Service Tax has already enquired into the matter by its order dated 20.01.2017 in F.No. SD-02/Ref-183/2016-17 (Annexure D).
- iv. Additional Commissioner, Service Tax, Ahmedabad scrutinized financial records, ST 3 returns, invoices, works contract agreements, RA bills etc. for the period 2011-12 to 2015-16 and statement of the assessee recorded under section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. The Additional Commissioner, Service Tax, Ahmedabad issued SCN on 17.05.2017 as to why:
 - (a) Should not disallow exemption in respect of work carried out for Odhav Estate Infrastructure Development Limited.
 - (b) Should not disallow exemption in respect of work carried out for Entrepreneurship Development Institute of India.
 - (c) Should not disallow exemption in respect of works carried out by M/s. M.S. Khurana Engineering Private Limited and P C Snehal Engineers Private Limited.
 - (d) Non-payment of service tax under RCM in respect of Transport of Goods by Road Service and Legal Consultancy Service.
 - (e) In addition interest should not be charged under section 75 and penalty should not be imposed under section 77 & 78 of the Finance Act, 1994.
- v. This proves that the Additional Commissioner, Service Tax, Ahmedabad has considered that the assessee was eligible for exemption from payment of service tax in respect of other work along with works executed for Ahmedabad Municipal Corporation, RIDCOR and Tourism Corporation of Gujarat Limited under notification no. 25/2012-ST dated 20.06.2012.
- vi. The assessee has provided all required documents for the period 2011-12 to 2015-16 and 2014-15 to June 2017 for scrutiny to the Preventive Wing of Service Tax Department and Audit Wing of Service Tax Department respectively. This proves that the assessee has not suppressed the facts with intent to evade the payment of service tax.
- vii. The Service Tax Department in SCN nowhere established that the assessee has suppressed the fact or proved willful misstatement or proved any fraud or collusion with intent to evade payment of service tax.
- viii. Honorable CESTAT, Bangalore in case of Rolex Logistic Private Limited Vs. CST {(2009-2013-STR-147(Tri.Bang))} held as under:

"where the SCN is based on information disclosed in balance sheet and in other documents maintained by appellants and the appellants have been paying tax and filling returns the tribunal held that there is no suppression of facts with intent to evade tax and larger period of limitation cannot be evoked."
- ix. Honorable CESTAT, Bangalore in case of Om Sai Professional Detectives and Securities Service Pvt. Ltd. vs. CCE {2008-12-STR 79(Tri.Bang)} held as under.

"where the assessee has paid the tax and reflected their income in the balance sheet and income tax return for the impugned period the extended period of limitation cannot be invoked."
- x. Honourable Supreme Court of India in case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.) held as under.

• "Suppression" used in the proviso to section 11A of the Central Excise Act, 1944 accompanied by very strong word as "fraud" or "collusion" and, therefore, has to be constructed strictly.

Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty.

Suppression means failure to disclose full information with intent to evade payment of duty when the facts are known to both the parties, omission by one party to do what he might have been done would not rendered it suppression.



- *When the Revenue invokes the extended period of limitation under section 11A the burden is cast upon it to prove suppression of facts.*
 - As far as fraud and collusion are concerned, it is evident that intent to evade duty is built into this words.
 - As far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful", preceding the words "misstatement or suppression of the facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty".
 - Therefore, there cannot be suppression or misstatement of facts, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to section 11A. Misstatement of facts must be wilful. Penalty not impossible under Section 78.
- xi. It can be seen from the facts mentioned above and judicial pronouncements that the service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of (a) fraud; or (b) collusion; or (c) willful misstatement; or (d) suppression of facts; with intent to evade payment of service tax. Therefore extended period of five years under proviso to Section 73(1) of the Finance Act, 1994 is not invocable.

C. SHOW CAUSE NOTICE IS BAD IN LAW

1. Second Show Cause Notice Invoking Extended Period Bad In Law.

In *Duncans Agro Industries Ltd. v. CCE, (2006) 7 SCC 642* it was held that there could be no 2 assessments for the same period.

Sonarome Chemicals Pvt. Ltd. v. CCE, Bangalore, 1998 (101) ELT 328 (T) in this case it was held that when two SCNs are issued on identical set of facts, extended period cannot be invoked: In *Naresh Kumar & Co. Pvt Ltd vs Union Of India (2011) 241 CTR 194* The Hon'ble Calcutta High Court held that there could be no doubt that extended period of limitation cannot be invoked on the ground of suppression when facts were known to the department. A demand for which a second show-cause notice is issued cannot be maintained by invocation of extended period of limitation, on the ground of suppression, if there was an earlier show-cause notice in relation to the same demand.

2. Board Circular is binding on Departmental Officers.

The assessee relied on the following judgments passed by the Apex Court:

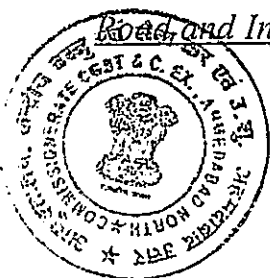
- (i) *Ranadey Micronutrients v/s Collector of Central Excise [2002-TIOL-184-SC-CX]*
- (ii) *Collector of Central Excise, Bombay v/s Kores (India) Limited [2002-TIOL-414-SC-CX]*
- (iii) *Collector of Central Excise, Patna v/s Usha Martin Industries [2002-TIOL-400-SC-CX]*

[However, this judgment was overruled by the Constitutional bench of the Apex Court in the case of *Collector of C. Ex., Vadodara v/s Dhiren Chemical Industries [2002 (139) ELT 3 (SC)]*.]

- (iv) *Paper Products Ltd v/s Commissioner of Central Excise [2002-TIOL-84-SC-CX]*

35. Further, on 3.7.2020, the assessee, filed further submissions, wherein, they interalia stated as under:

Road and Infrastructure Development Company of Rajasthan Ltd. (RIDCOR)



36 In the year 2013 RIDCOR had the Chief Secretary of Rajasthan at its helm of affairs as its chairman of board of directors. The resolution for the same is attached as annexure A. The definition of Governmental authority as defined under serial 2(s) of notification 25/2012 ST clearly uses the words equity or control by the Governmental. The word control as defined by The Hon'ble Supreme Court of India in State of Mysore v. Allum Karibasappa 1974 (2) SCC 498 the word "control" suggests check, restraint or influence. Control is intended to regulate and hold in check and restrain from action. As the chief secretary is appointed as the chairman of the board hence control is exercised by the state Government as in the definition of Governmental Authority if control vests with the Government then it suffices to hold that the authority is a Governmental Authority.

36.1 They submitted a Certified True copy of the resolution passed in the Meeting of the Board of Directors of RIDCOR, held on March 2012 at Jaipur.

M.S. University Baroda

37. As already stated in the main submission the M.S. University Baroda is established by an Act of Legislature. The same act was passed before 1950 i.e. before coming into force of the constitution of India and hence the same has been saved by Article 372 of the Indian Constitution. The same was adopted by the Gujarat Legislature by Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960 and then amended by the legislature from time to time. Section 10 of the Act clearly suggests that the appointment of the Vice Chancellor shall be done by the State Government, thereby it falls under definition of Governmental Authority in terms of para 2(s) of notification 25/2012-ST. The relevant extract of the Act is attached as annexure-B

37.1 The decision in Sharpoorji Poonji & Pvt. Ltd. Vs. Commissioner, Customs, Central Excise and Service Tax, Patna [2016-TIOL-556-HC-PATNA-ST] is squarely applicable in our case in which it was held that

"As per definition Governmental Authority means an authority or board or any other body set up by an Act of Parliament or State Legislature is a Government Authority. The authority set up by an Act of Parliament or State Legislature is not and can not be made subject to condition of 90 % or more participation by way of equity and control to carry out any functions entrusted to a municipality under Article 243W of the Constitution. Construction activity undertaken is exempt from payment of service tax in terms of notification no. 25/2012-ST dated 20.06.2012."

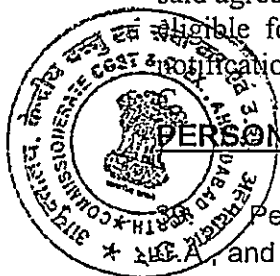
As the M.S. University Baroda is established under an act of competent legislature hence it is a Governmental Authority.

Rean Watertech India

38. They herewith attached copy of the work order received from Madhya Pradesh Jal Nigam in favor of Bengal Tools Limited and P.C Snehal Construction Company Limited JV. This joint venture has in turn given the contract to REAN Watertech Private Limited, REAN watertech Private Limited in turn sub contracted work to P.C.Snehal Construction Company. Copy of the said agreement was attached herewith. As per entry 29(h) of Notification 25/2012, the assessee is eligible for exemption for payment of service tax under serial no.12 (e) read with 29(h) of notification no.25/2012-ST dated 20.06.2012. Copy of the agreement was attached as Annexure

PERSONAL HEARING:

Personal hearing in this matter was held on 15.06.2020, wherein Shri Bishan Shah, and Shri Kanu K. Modi, Accountant, appeared before me on behalf of the assessee. They filed their reply to the Show Cause Notice, regarding their contracts with Ahmedabad Municipal Corporation, they submitted that the activity of AMC does not pertain to business or commerce and AMC is charging only a nominal amount for renting the halls viz. Pt. Dindayal Community



Hall and Tagore Hall. In case of RIDCOR, they submitted that it is controlled by Rajasthan Government. In case of M/s. Rean Water Tank Pvt. Ltd., they submitted that they are sub-contractors of the contract accorded by Madhya Pradesh Jal Nigam, owned by the Govt. of Madhya Pradesh. As per Entry no. 29(H) of the Notification No. 25/2012-S.T., dated 20.6.2012, they are exempted from payment of Service Tax, as under the said entry, the sub contractor is exempt from Service Tax, if the main contractor is also exempt from Service Tax. They submitted that they will submit the relevant documents to the above, which they have subsequently produced on 3.7.2020.

40. Further, Shri Bishan Shah, also appeared for the personal hearing on 20.7.2020, and stated as under:

A: Services provided to M/s. Rean Watertech India.

41. In case of M/s. Rean Water Tank Pvt. Ltd., he reiterated that the assessee is a sub-contractor of the contract accorded by Madhya Pradesh Jal Nigam, owned by the Govt. of Madhya Pradesh. As per Entry no. 29(H) of the Notification No. 25/2012-S.T., dated 20.6.2012, they are exempted from payment of Service Tax, as under the said entry, the sub contractor is exempt from Service Tax, if the main contractor is also exempt from Service Tax.

41.1 The Madhya Pradesh Jal Nigam Maryadit (MPJNM) (A Govt. of Madhya Pradesh Undertaking) awarded the contract for Engineering, Construction, Testing, Commissioning, trial run and operation and maintenance of various components of combined Devasarra- Bhatara-Dhuti-Piparjhari Multi Village District Balaghat Water Supply Schemes District Balaghat to Ms. Bengal Tools Ltd. & MIS. P. C Snehal Construction Company JV, vide the letter of acceptance for same was dated 16.07.2014. The work for the project was then subcontracted to M/s. Rean Watertech Pvt. Ltd. by Bengal Tools Ltd. through letter dated 28.02.2015, who further subcontracted the work to PC Snehal Construction Company. Copies of all 3 communications were submitted by him.

41.2 He drew attention to Work Order No. 12/D&M/MPJNM/2014-15, dated 16.7.2014, wherein MPJNM had entered into contract with the Government for Rural Water Supply Schemes on turn-key basis. He produced a copy of letter of MPJNM addressed to M/s. Bengal Tools Ltd. and P.C. Snehal Const. Co., a joint venture, wherein this Work Order has been referred to. From this letter, it comes out clearly that the original agreement was entered into prior to 1.3.2016. It also is clearly evident that the entire work was allocated by the Government to Madhya Pradesh Jal Nigam who in turn, allotted it to M/s. Bengal Tools Limited and it was finally allotted to P.C Snehal Construction Company through Rean Watertech. Thus all are sub-contractors of the Government venture. Therefore, as per entry 29(h) of Notification 25/2012, the assessee is eligible for exemption for payment of Service Tax under serial no.12 (e) read with 29(h) of notification no.25/2012-ST dated 20.06.2012.

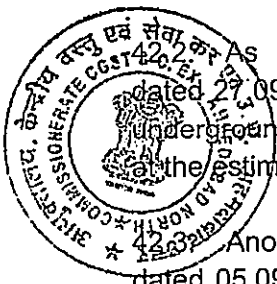
B: RIDCOR: ROAD INFRASTRUCTURE DEVELOPMENT COMPANY OF RAJASTHAN LTD

42. Regarding the services provided by the assessee to M/s. RIDCOR, he submitted that the matter had been examined by the Preventive wing of erstwhile Central Excise Commissionerate, Ahmedabad-II, for the period for the period from 2011-12 to 2015-16.

42.1. M/s. RIDCOR had undertaken the work of constructing parking from Rajasthan Government. The same has been sub-contracted to M/s P.C.Snehal.

As per Agreement No. F.55/CE/DLB/12-13/RIDCOR/Parking Project/Udaipur/15096 dated 27.09.2013 issued by the Joint Secretary, Government of Rajasthan to M/s. RIDCOR for underground multi level parking, Hathiwala Park, the project has been awarded to M/s. RIDCOR the estimated cost of Rs.14,37,51,602/-.

Another agreement No.F.55/CE/DLB/12-13/RIDCOR/Parking Project/Jodhpur/1021 dated 05.09.2013 issued by the Deputy Secretary, Government of Rajasthan to M/s. RIDCOR for underground multi level parking at Gandhi Park, Jodhpur, the project has been awarded to



M/s RIDCOR at the estimated cost of Rs.11.57 crore.

42.4. Thus the services provided to the Government of Rajasthan by principal contractor i.e. RIDCOR is exempted as per sr. No. 12 of the Mega Exemption notification 25/2012 ST which is reproduced as under:

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

42.5. RIDCOR has carried out projects related to public amenity i.e. parking lots used by Government of Rajasthan (copy of works order issued by Govt. of Rajasthan which are predominantly used for purpose other than commerce and industry.

42.6. M/s. P.C. Snehal has claimed exemption under Sr. No.29 (h) of Notification No. 25/2012-ST dated 20.06.2012 which is reproduced as below:

(h) Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.

42.7. M/s. PC Snehal has provided the works order issued by RIDCOR with reference to original contract. Thus, the works contract taken by RIDCOR from Govt. of Rajasthan has been as such sub contracted to M/s. PC Snehal. As the principal works contract by RIDCOR is eligible for exemption being provided directly to state government, therefore sub contract will also enjoy exemption in the light of Sr.no. 29(h) of the said notification. Thus, it appears that the construction of parking place by M/s. P.C Snehal is exempted from Service Tax."

42.8 In view of the above, Shri Bishan Shah, on behalf of the assessee, requested that the charges of Service Tax on the above may be dropped.

DISCUSSION AND FINDINGS:

43. I have gone through the records of the case, the submissions made by the assessee in their reply to the Show Cause Notice and further submissions.

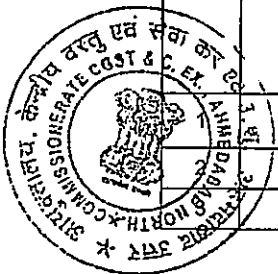
44. The two issues to be decided are as under:

(i) Whether the Show Cause Notice under consideration can be considered as a second notice as it is based on the same set of facts and period as in the Show Cause Notice dated 17.5.2017 and whether the ingredients of suppression of facts are invocable in the present case, or otherwise.

(ii) Whether exemption from payment of Service Tax under Notfn No 25/2012- ST dated 20.6.2012, as amended, is admissible for the projects/work orders tabulated below, or otherwise.

(Rs. In actual)

No	Project/work Order	Project Income				Total Service tax payable
		2014- 15	2015-16	2016-17	2017-18 (April-June 2017)	
	AMC-Auditorium (Rajpath) Income.	70794297	93846078	106977309	0	1536 1781
	AMC Tagore Hall Income Account	5827211	1155295	232220	232220	670199
	Gujarat Tourism Dakor (PCK-II)	27624676	22970644	2119798 1	0	3969940



4	Gujarat Tourism - Dakor Work	39894376	6654542	4769546	0	2644514
5	Tourism Corporation of Gujarat Ltd (JAGANA)	8949575	0	0	0	442467
6	Gujarat Tourism Museum Interior Work	0	1347764	0	0	78170
7	Gujarat Tourism - Bindu Sarovar Work	0	661518	0	0	38368
8	Tourism Corporation of Gujarat Ltd (JAGANA)	0	3911326	0	0	226857
9	RIDCOR Multi level Parking:Gandhi Maidan	4381786	84177632	15786313	0	6046117
10	RIDCOR - Underground Parking (Hathiwala Park)	12600633	49944969	16698683	0	4521704
11	The Registrar, Gujarat Vidyapith	630612	0	0	0	31177
12	MS University	0	12937100	14744208	733171	2938240
13	M S University (Stadium)	0	0	0	7493788	449627
14	Mahagujarat Medical Society Building	0	4368958	380157	0	276209
15	Rean Watertech Pvt Ltd (Income)	0	20000000	50025700	0	4161542
16	PIU, Dediypada	0	0	0	5126450	307587
	Total	170703166	30197582	23081211	13585629	
	Service Tax payable	8655638	18127617	14522666	858580	42164501

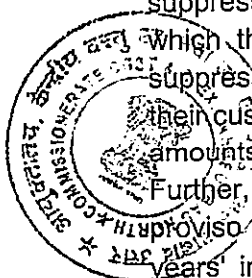
(A) : ISSUE: Issuance of the second Show Cause Notice, invoking extended period:

45. I find that a Show Cause Notice dated 17.05.2017, was issued to the assessee for the period from 2011-12 to 2015-16, for non payment of Service Tax on Works Contract Service provided to various organizations as well as GTA and Legal Consultancy Services under Reverse Charge Mechanism (RCM). The present Show Cause Notice has been issued to the assessee for purported non-payment of service tax by wrongly availing exemption as envisaged under clauses 12, 12A and 29 of Notfn No.25/2012-ST dated 20.6.2012, as amended. The issues covered under both the Show Cause Notices are different. The notice issued on 17.5.2017 was for a specific issue/information in as much as certain documents were sought by Audit from the assessee for proper scrutiny of documents but the assessee had failed to produce the same. The present SCN has been issued on different issues and is based upon new evidences and facts brought out during the course of Audit and which were not revealed to the department by the assessee at any point of time.

46. Attention is drawn to Para 3.7 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, wherein it has been clarified as under:

"Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilful mis-statement regarding the clearances made under appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN. Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation."

47. In the present case, the said assessee had not declared the amount which they had received from their customers in their periodical ST-3 returns and they had deliberately suppressed these facts and the department had no prior knowledge of the facts and issues on which the present notice was being issued. It, therefore, appeared that the assessee had suppressed the material facts of receiving consideration on the services provided by them to their customers in their ST3 returns, with an intent to evade the payment of service tax. This fact amounts to suppression and is vital for invoking extended period under the circumstances. Further, in view of para 3.7 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, the proviso to Section 73(1) of the Act is aptly applicable for invoking the extended period of 'five years' in the case of the present show cause notice. Accordingly, the proposed notice cannot be considered as a second notice on the same set of facts and period as provided in the Show Cause Notice dated 17.5.2017, issued to the assessee.



(B): ISSUE 2: Admissibility of exemption from payment of Service Tax under Notfn No 25/2012- ST dated 20.6.2012, as amended, for the projects/work orders tabulated in para 15 (ii) above.

48. I hereby take up the projects/works order and examine the same vis-à-vis admissibility of exemption under Notfn No 25/2012- ST dated 20.6.2012, as amended.

49. The relevant text to Notification No. 25/2012-ST dated 20.06.2012, prior amendment, is reproduced below:

"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal;

50. The relevant text to Notification No 25/2012-ST dated 20.06.2012, as amended, vide Notification No. 9/2016- ST dated, 1.3.2016 is reproduced below:

12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: Provided that nothing contained in this entry shall apply on or after the 1st April, 2020;] Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f. 1.3.2016.

51. 29(h) of Notification No 25/2012-ST dated 20.06.2012 w.r.t. Services by the following persons in respective capacities – stipulates as under

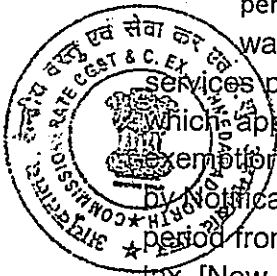
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;"

52. The gist of the amendment to the Notification 25/2012-S.T., dated 20.6.2012, is as under:

52.1. Exemption –(vide Entry No. 12A of Notification No. 25/2012-ST) from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of

- a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

was withdrawn with effect from 1.4.2015. The same had been restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is restored till 31.03.2020. [Notification No. 25/2012-ST as amended by Notification No. 09/2016-ST dated 1st March, 2016] The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also exempted from service tax. [New section 102 as inserted in the Finance Act, 1994]



52.2. The aforesaid exemption provided under Entry 12 (a, c, f) prior to 1.04.2015 has thus been restored w.e.f. 1.3.2016 under new Entry 12A. However, such restored exemption shall be subject to the following conditions:

- Services should be provided under a contract
- Such contract should have been entered prior to 1.3.2015 on which appropriate stamp duty, wherever applicable had been prior to 1.3.2015.
- This exemption shall not apply on or after 1.4.2020.

52.4. Thus, to claim this exemption, such contract or agreement should have been entered into prior to 1.3.2015. The history of exemption on aforementioned services, in summarised as under:

Period	Exemption
1.7.2012 to 31.3.2015	<u>Entry 12, Notification No. 25/2012-ST</u>
1.4.2015 to 29.2.2016	<u>Section 102, Finance Act, 1994 as inserted by Finance Act, 2016 (Exemption withdrawn)</u>
1.3.2016 to 1.4.2020	<u>Entry 12A, Notification No. 25/2012-ST as amended by Notification No. 9/2016-ST dated 1.3.2016. (restored exemption, subject to conditions, one of which was that the contracts should have been entered prior to 1.3.2015)</u>

53. Project-wise discussions in respect of each of the project is detailed below:

Sr No 1 and 2 of Table A above: Construction of AMC - Auditorium, Behind Rajpath Club and Renovation of AMC Tagore Hall

54. The assessee had claimed exemption under clause 12A(a) and (b) to Notfn No 25/2012-ST, as amended. It was stated that they have provided services to the Ahmedabad Municipal Corporation, a Government/Local Authority, for construction of an auditorium building behind Rajpath club, Ahmedabad against a Work order dated 27.12.2013. The assessee had submitted a certificate dated 21.8.2018 given by the Ahmedabad Municipal Corporation in Form 3(A) which stated that the work pertained to civic amenities, non-commercial and public utility infrastructure project, for the construction of the auditorium. In the other case, the assessee had provided services to the Ahmedabad Municipal Corporation for the renovation, beautification and painting of Tagore Hall against a letter of intimation dated 1.2.2013.

Allegation in the SCN:

54.1 The assessee had provided services to the Ahmedabad Municipal Corporation in respect of the construction of the auditorium and renovation of Tagore hall for which contract have been entered on 27.12.2013 and 1.2.2013, respectively. The rent for the auditorium charged by Ahmedabad Municipal Corporation was stated to be ranging from Rs 20,000/- to Rs 40,000/- per day and the rent for Tagore hall was ranging from Rs 5,000/- to Rs 8,000/-. Accordingly, it appeared that the auditorium/renovation of Tagore hall were not meant predominantly for use other than commerce, industry or any other business or profession as envisaged in clause 12A(a) to Notfn No 25/2012-ST dated 20.6.2012, amended. As seen from the rent charged/proposed to be charged, it appeared that the auditorium/Tagore hall was meant for commercial or business use. Further, there was no evidence that they are structures meant predominantly for use as an educational, a clinical, or an art or cultural establishment. Accordingly, the condition to clause 12A(a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended, are not fulfilled in this case. Hence, the exemption benefit appeared to be not available for construction of auditorium/renovation of Tagore hall to the assessee, under Notfn No 25/2012-ST dated 20.6.2012, as amended.

DISCUSSION:

54.2. The assessee provided service to Ahmedabad Municipal Corporation, a local authority,



as defined in clause (e) of Article 243P of the Constitution of India, for construction of auditorium (Pandit Deendayal Hall) and renovation of Tagore hall against Work orders issued on 27.12.2013 and 01.02.2013 respectively. The Ahmedabad Municipal Corporation or the AMC, established in July 1950 under the Bombay Provincial Corporation Act, 1949, is responsible for the civic infrastructure and administration of the city of Ahmedabad. The corporation is headed by a Municipal commissioner, an IAS officer appointed by the government of Gujarat. As per the section 63 and 66 of the Bombay Provincial Municipal Corporation Act, the AMC is responsible for certain obligatory and discretionary services. Construction and maintenance of theaters, community halls and museums etc. form a part of the discretionary services of AMC. Serial no. 12A(a) of notification no. 25/2012-ST, as amended, is not applicable in respect of these works as it had commenced prior to 1st March, 2016, as envisaged under proviso to Notification no. 9/2016-ST dated 01.03.2016. Both Tagore hall and Pandit Deendayal Hall are listed as community halls on the website of AMC. The auditorium behind Rajpath club and Tagore hall are given for public use and is available to the public at a nominal rent. Charges recovered from public are very nominal compared to heavy charges collected by private organizations for providing such amenities.

54.3. On going through the Details of Work completed/in Progress, duly signed by the A.D., City Engineer, AMC, I find that the work of construction of Auditorium Building, B/h. Rajpath Club (Pt. Deendayal Hall) and the renovation of Tagore Hall, have been referred to as "A Civic Amenities Non Commercial and Public Utility Additional Infrastructure Project" From the same, it comes out clearly that the auditorium and Tagore Hall were not meant for commercial use. The letters issued by AMC are scanned and reproduced herewith for ready reference.

(Insert scanned copies –CSP 185 TO 193)



AHMEDABAD MUNICIPAL CORPORATION
(NEW WEST ZONE)
New West Zone, Rajmata VijayaRajey Sindhiya Bhavan,

Office of Addition City Engg.
Bodakdev.
Dt.27.12.13

WORK ORDER

To,
P.C.Snehal Construction Co.
Ground floor, Pravesh Apartment
10, Mahadevnagar society,
Sardar patel circle,
Naranpura, Ahmedabad -380014

6756
27/12/13

Subject :- Construction of An auditorium Building at T.P. 50 F.P.382
Opp.Kensvilla golf club, B/H Rajpath club in New West
Zone.

This is in connection to the LOI No.6756 Dated 16/11/13 issued to you. You are requested to start the work for Construction of an auditorium Building at T.P. 50 F.P.382 Opp.Kensvilla golf club, B/H Rajpath club in New West Zone immediately under the intimation of this office.

You are also requested to execute the contract agreement as per the prevailing norms of ANIC.

Thanks.

Add. City Engg.
(New West Zone)

Encl: For ...

.Type text)



અમદાવાદ મ્યુનિસિપલ કોર્પોરેશન



જી.જી.ટી. અનુક્રમણિકા-૨ (પ ગ્રામ)
 જે. સમગ્રલાલ પટેલ ભવન ઉપમાનપુરા
 અમદાવાદ ૧૬ કોનન રજીસ્ટ્રેશન નંબર
 તા. ૦૧-૦૧-૨૦૧૩

પ્રતિબંધી
 ડી. સી. સ્નેહલ કન્સ્ટ્રક્શન કો.
 ૯ મહાનગર, જી.જી.ટી. સેન્ટર,
 નવરાંજણ રોડ પાસે,
 પુસ્તક નંબર ૨૨૫૫૫૫,
 અમદાવાદ ૩૮૦ ૦૦૯

લેટર ઓફ ઇન્વોઇસન

વિષય: પશ્ચિમઝાંઝા પાલકી તોરમાં આવેલ કાગોર હોલને સીનોવેશન કરવાનું કામ બાબત.

મ-૬૧૨૧૫,

આ લેટર કામગીરી તમારું કામ સંપૂર્ણ કરવા સે કમીટી ડી.ન નંબર ૮, તા. ૦૧-૧૦-૧૩ થી મોકલેલ વચલા ડી. આ કામના કાંડે લેખે કમીટી ડી. નંબર ૦૧, ૧૩૫.૦૦ જેમાં કરાવવા હાલ પાલકી વહીવટી કામગીરી સંપૂર્ણ કરવામાં આવેલી. આ કામ તમને સંપૂર્ણ રીતે કરવા સે કમીટી ડી. નંબર ૦૧, ૧૩૫.૦૦ જેમાં કરાવવા હાલ પાલકી વહીવટી કામગીરી સંપૂર્ણ કરવામાં આવેલી. આ કામ તમને સંપૂર્ણ રીતે કરવા સે કમીટી ડી. નંબર ૦૧, ૧૩૫.૦૦ જેમાં કરાવવા હાલ પાલકી વહીવટી કામગીરી સંપૂર્ણ કરવામાં આવેલી.

ડી.સી.સી.
 પાલકી વહીવટી

(Referred to in Rule No.6B (ii))
 WORKWISE DETAILS OF WORK COMPLETED OR IN PROGRESS BY THE CONTRACTOR

1	Name of Contractor	: P. C. Snehal Construction Co. 8th Floor, City Centre, Navrangpura, Ahmedabad - 380 009
2	Name of Work	: Construction of an Auditorium Building at TP 50 FP 382 Opp. Kanavilla Golf club, Bih Rajpath club, Now West Zone for Ahmedabad Municipal Corporation (A Civic Amenities Non Commercial and Public Utility Additional Infrastructure Project of Ahmedabad City)
3	Estimate cost of work put to tender	: Rs.33,79,49,020.43
4	Tendered Amount	: Rs.32,00,17,244.44
5	Date of starting the work	: 27.12.2013
6	Date of completion of the work (As per contract agreement)	: 28.12.2015
7	Actual date of the completion of the work	: 14.10.2016 (Revised Time Limit)
8	Amount of work done	: Rs. 30,37,44,761.79

For, P. C. Snehal Construction Co.

Partner

- 9 State whether the details as above given by : Yes
 the contractor are correct?
- 10 State whether the details as above given by : Yes
 the contractor are correct, if not, state as to
 what is the correct information.
- 11 State whether the contractor has executed : Contractor had carried out the work satisfactory as per specification.
 the "work-in-progress" satisfactorily as per The project is executed as per design and direction of L J Purani
 specifications has completed the work Associates. The execution was carried out under the supervision of
 satisfactorily as per specification if not give Ahmedabad Municipal Corporation and PMC Agency - HCP Design
 the correct position of the work. Planning Management Pvt. Ltd.
- 12 Any other remarks. : Project Consultant - L J Purani Associates and HCP Design Planning
 Management Pvt Ltd. is appointed by Ahmedabad Municipal
 Corporation. Main Scope of Works :-

Place : Ahmedabad
 Date :

Item Description	Unit	Quantity
Excavation	M3	25105.96
TMT	MT	1056.49
RCC	M3	9226.75
Masonry	M3	1578.86
Plaster	M2	35175.55
Color Work	M2	33914.38
Structural Steel	MT	172.28
Seas	Nos	1053.00
Flooring	SMT	22869.05
Water proofing (Chinmosaic)	M2	2237.51
Aluminum Window	M2	009.00
20 Passenger Lift	Nos	2 (Basement - GP - 2)
Building Type		Basement, GP = 2 - RCC Frame Structure
Outding Height	Mtr	19.80
Civil Work	Rs.	20919562.15
Electric Work	Rs.	2887658.07
HVAC Work	Rs.	1451560.66
Interior Work	Rs.	40143229.54
Fire Fighting Work	Rs.	8457753.97
Audio Video Work	Rs.	2546827.20
Total Work Done	Rs.	303744761.79

ડી.સી.સી. પાલકી વહીવટી



187

FORM NO.3 (A)
(Referred to in Rule No.35 (ii)
WORKWISE DETAILS OF WORK COMPLETED OR IN PROGRESS BY THE CONTRACTOR

01. Name of Contractor	P. C. Senehal Construction Co. (Also known as P. C. Senehal Construction Pvt. Ltd.)
02. Name of work	Regaining, Waterprooing, Electrification & Audio Visual System work at Tagore Hall at P&CL Ahmedabad with 733 KVA, 11 / 0.433 KV Sub Station of 11 KV (A Civic Activities Non Commercial and Public Utility Additional Infrastructure Project)
03. Estimated cost of work put to Tender	Rs.7,39,20,410.00
04. Tender Amount	Rs.8,84,83,492.00 (Revised Rs.11,67,28,173.10)
05. Date of starting the work	05.03.2013
06. Date of completion of the work (As per contract agreement)	04.12.2013
07. Actual date of the completion of the work	04.12.2013
08. Amount of work done	Rs.11,50,36,303.00

For, P. C. SENEHAL CONSTRUCTION PVT. LTD.
[Signature]
Authorized Signatory

09. State whether the details as above given by the contractor are correct? Yes

10. State whether the details as above given by the contractor are correct, if not, state as to what is the correct information? Yes

11. State whether the contractor has executed the "Work in progress" satisfactorily as per specifications / has completed the work satisfactorily as per specification if not give the correct position of the work. Contractor had carried out the work satisfactorily as per specification. The project has executed as per the design and direction of Architect.

12. Any other remark

Rs. 4,12,41,535.00	Work description :-
Rs. 3,74,07,033.00	Civil work including RCC Frame Structure (43350 SFT Area)
Rs. 3,31,67,835.00	Audio system work
Rs. 10,10,000.00	Electrical work including HVAC, Fire, BMS etc.)
	G.M for 04 years (November 2013 to October 2017)

Please : Ahmedabad
Date : 21.08.2018

[Signature]
ADDL. C.E.
WEST ZONE (AMC)

[Signature]

110-13

Annex 13



187

PE-Dakor-pe-2-Cont/2013/3-6
Date: 05/04/2013

M. P. C. Senehal Construction Co.
1st floor, City Center Nr. Sakatik Cross Road,
Bhavrangpura
Ahmedabad.
Gandhinagar, Satellite
Ahmedabad - 38.

Work Order for the Work of Tourist facilities at Dakor Dist:Kheda
(Package-2).

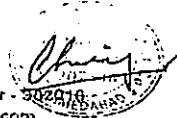
1. Tender submitted by on 15/02/2013.
2. Approval of Engineering Director in the file dated 15/02/2013
3. Our Letter of Intent No. PE-Dakor-pe-2/Cont/2013/871 dated 16/02/2013
4. Security Deposit of Rs. 13,92,53,488/- in form of Demand Draft Agreement was given on 05/04/2013

Therefore, you have paid the necessary security deposit, and making agreement with us for the above mentioned project work has to be done in the work order for the said work under the following terms and conditions that of mentioned in the tender:

- 1. You are requested to start the work immediately as the time limit of 15 (Fifteen) months shall be considered with effect from the date of Letter of Intent.
- 2. The main Corporation of Gujarat Limited has accepted your bid of the tendered cost of Rs.13,92,53,488/- for the work of "Work of Tourist facilities at Dakor Dist:Kheda (Package-2)". Hence, the amount of the work order is of Rs.13,92,53,488/- (Rupees in words Thirteen Crores Ninety two Lakh Fifty three thousand Four hundred eight only.)
- 3. The contractor shall be liable for the quality and the total quantities shown in the tender in the work order and the total quantities shown in the tender shall in no way vitiate the contract.
- 4. If any of the mentioned items the exact amount will be worked out on the basis of actual quantities executed in respect of each item mentioned in the tender as Specified there.
- 5. The contractor shall execute no extra work unless instruction in writing is /are given and thereafter for the extra items finalized. Any extra item executed without the knowledge and written approval of the undersigned is summarily be rejected and



[Signature]



(A Govt. of Gujarat Undertaking)
Nigam Bhavan, Sector 16, Block C First Floor, Nr. GH 4 1/2 Bus Stand, Gandhinagar - 382016
Tel. : +91-79-23245119-20, F. : +91-79-23245121, W. : www.gujratourism.com

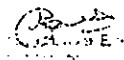
183

- Tourism Corporation of Gujarat Ltd shall not be liable to make any payment thereon
2. The work under contract shall be executed by you as per stipulation of LOI. In case if the contractor fails to complete the work in the prescribed time limit, the penalty at the rate of 0.05% of contract value per day but maximum up to 5% of contract value.
 3. The contractor shall work under close Coordination and supervision of the Project Management consultant /Architect and TCGL at the site and maintain the site order book, which certifies the preciseness of the time to be verified at the site. From time to time C.E. Engineer will also make site visit and access to anywhere at the piece of work.
 4. As mentioned in tender all instructions given by Project Management consultant Architect and TCGL's Engineer and undersigned shall be incorporated in the project instruction book and all these instructions shall be strictly observed while executing the work. The quality and time are essence of the job which shall be noted.
 5. The contractor shall have to strictly follow the specification. However, all materials wherever stipulated or desired shall be got approved by undersigned based on the recommendation of the architect, Project Management consultant and TCGL's Engineer if deemed fit.
 6. The bills shall be submitted by you in triplicate along with the details of measurement there on your firm's/company's letter and (Invoice from) along with the Divanda stamp receipt.
 7. TCGL reserves the rights to terminate the order without giving any notice and without assigning any reason thereof.

Please acknowledge the receipt of the order and expedite the work immediately and report the matter.

Thanking You,

Mine faithfully,


C. S. Kum Engineer

- C. S. Kum 14 for information pl.
- (1) Asst. Manager, Accounts, Project Branch, TCGL
 - (2) Architect: Shri. Gandhi & Associates, Kunj-2, Municipal staff housing society, Plot no. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, Memnagar, Ahmedabad-3800152



54.4. The relevant extract of Notification no. 25/2012-ST, 20.6.2012, is as under:

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

55. I concur with the submission of the assessee on this issue and also rely on the Hon'ble Rajasthan High Court in the case of B.B. Nirman Sahakari Samiti v. State of Rajasthan AIR 1979 Raj. 209, wherein, it has been held that:

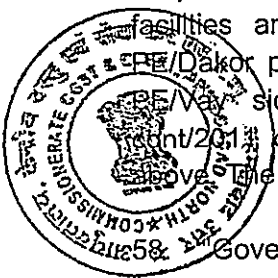
"Public utility means any work, project which is going to be useful to the members of the public at large. The public benefit aided at or intended to be secured need not be to the whole community but to a considerable number of people."

56. In view of the above, I hold that the assessee is eligible for exemption from payment of service tax under serial no. 12(a) of notification no.25/2012-ST dated 20.06.2012.

Sr No 3 to 8 of the Table A: Services provided to Tourism Corporation of Gujarat Limited in respect of various works.

57. The assessee had claimed exemption under clause 12A(a) and (b) to Notfn No 25/2012-ST, as amended. It was stated that they had provided services to the Tourism Corporation of Gujarat Limited, which is a state government undertaking, for development of facilities and welfare of pilgrims/tourists, under different Work Orders/letters (Letter No PE/Dakor pa-2/Cont/2013 dated 5.4.2013, No PE/Dakor/Contractor/2012 dated 3.7.2012, No PE/Sidhpur/Jagana/Contractor/2013 dated 16.2.2013, No PE/Sidhpur/Museum interior/Cont/2013 dated 27.2.2012, No PE/Sidhpur/2010 dated 1.2.2010), as seen from the table. The services were not for commercial purposes.

"Government Authority" has been defined in the notification as under:
"governmental authority" means an authority or a board or any other body;
(i) set up by an Act of Parliament or a State Legislature; or



- (ii) established by Government,
with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

59. Schedule 12 to the Constitution of India read with Article 243W entrusts the following activities to a municipality:

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and upgradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- (m) Promotion of cultural, educational and aesthetic aspects.
- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- (o) Cattle pounds; prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

ALLEGATION IN THE SCN:

60. Though M/s Tourism Corporation of Gujarat Limited was established by the Government of Gujarat, the purpose was to promote tourism and not for carrying out any functions entrusted to a municipality under Article 243W, as stated above. It had appeared that Tourism Corporation of Gujarat Limited had not carried out any functions as detailed under Article 243W. It appeared that the services provided by the assessee to Tourism Corporation of Gujarat Limited are not meant predominantly for use other than commerce, industry or any other business or profession. However, these were also not structures meant predominantly for use as an educational, a clinical or an art or cultural establishment. It had appeared that the services were meant for commercial or business use. Thus it was alleged in the Show Cause Notice that the conditions to clauses 12A(a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended, were not fulfilled in this case. Hence, the exemption benefit appeared to be not available for services provided to Tourism Corporation of Gujarat Limited, under Notfn No. 25/2012-ST dated 20.6.2012, as amended.

DISCUSSION:

61. The assessee executed works entrusted by M/s. Tourism Corporation of Gujarat Limited, a State Government Company comprising 100% equity by Government of Gujarat. The assessee had:

- (i) executed works for providing tourist facilities at Dakor, a holy pilgrimage of Hindu for worship of Lord Krishna having historic importance of the temple and
- (ii) executed the work of infrastructure & destination development of Bindu Sarovar temple complex at Siddhpur, having religious importance for Hindus for performing spiritual or religious activities.

The projects were for providing tourist facilities at Dakor, a holy pilgrimage of Hindu for worship of Lord Krishna having historic importance and the work of museum and infrastructure



facilities at Bindu Sarovar at Siddhpur having religious importance for Hindus for performing spiritual activities such as "Tarpan Ceremony," wherein the assessee had executed the work of providing way side amenities for tourists at Jagana. The SCN does not dispute the fact that the Tourism Corporation of Gujarat Ltd. is a governmental authority and that it was established for promotion of tourism.

62. Tourism plays an important role for the economic development of a country by boosting the revenue of the economy, creating jobs, development of infrastructure and instilling a sense of cultural heritage in its citizens. The most direct effect is on the primary tourism sectors viz. lodging, restaurants, transportation, amusements, and retail trade etc.

63. Schedule 12 to the Constitution of India read with Article 243W entrusts the following activity to a municipality:

c) Planning for economic and social development.

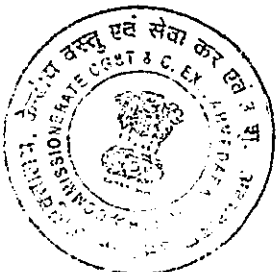
63.1 I find that one of the purposes of M/s Tourism Corporation of Gujarat Limited, is to carry out the function c))Planning for economic and social development, entrusted to a municipality under Article 243W, as stated above. In view of the above, the job of M/s Tourism Corporation of Gujarat Limited, aptly falls within the ambit of "j) Planning for economic and social development." of the Schedule 12 to the Constitution of India read with Article 243W.

64. Further, the work for providing tourist facilities at Dakor, a holy pilgrimage of Hindu for worship of Lord Krishna having historic importance of the temple, and the work of museum and the work of infrastructure facilities at Bindu Sarovar at Siddhpur, both are for the interest of the public as a whole. These activities were ultimately for the use of the people who visit these places for its religious and social importance. Moreover, the work of the museum cannot be termed to be for commercial purpose, because the traditional role of museums is to collect objects and materials of cultural, religious and historical importance, preserve them, research into them and present them to the public for the purpose of education and enjoyment. These museums help to preserve and promote our cultural heritage.

65. Thus the activities of M/s Tourism Corporation of Gujarat Limited, would also fall under (m) Promotion of cultural, educational and aesthetic aspects and (q) **Public amenities** including street lighting, parking lots, bus stops and **public conveniences**, of the Schedule 12 to the Constitution of India read with Article 243W. From the above, I find that the work done by M/s Tourism Corporation of Gujarat Limited are for and in the interest of public as a whole and not for commercial purpose.

66. The work orders were issued prior to April-2013. The SCN already accepts the fact that Tourism Corporation of Gujarat Limited is a governmental authority and is established for purpose of tourism. Serial no. 12A(a) of notification no. 25/2012-ST, as amended, is not applicable in respect of these works as the contract had commenced prior to 1st March, 2016, as envisaged under proviso to notification no. 9/2016-ST dated 01.03.2016.

67. On going through the Details of Work completed/in Progress, duly signed by the Executive Engineer, Tourism Corporation of Gujarat Ltd., the work of Development of Tourist facilities at Dakor, Dist. Kheda, and the work of Infrastructure & Destination Development of Bindu Sarovar Temple Complex and surrounding, have been referred to as "**A Civic Amenities Non Commercial and Public Utility Additional Infrastructure Project**" From the same, it comes out clear that the above works were not meant for commercial use but for public utility. The letters are scanned and reproduced herewith for ready reference.



No. PE/Sidhpur/Museum Interior/cont/2011 / 586
Date :- 27/02/2012.

To,
M/s. P.C.Snehal Construction Co.
9th floor, City Centre, Nr.Swastik Cross Road,
Navarangpura,
Ahmadabad.

Sub. :- Letter of Intent (L.O.I.) for the Interiors and allied works of Museum Building at Bindu Sarovar Complex, Siddhpur Dist:Patan Gujarat.

Ref. :- (1) Tender submitted by on 02/12/2011.
(2) Your negotiation letter dated 25/01/2012.
(3) Approval of Board, TCGL dated 21/02/2012.

Gentlemen,
We are pleased to inform you that Tourism Corporation of Gujarat Limited has accepted your bid after considering rebate @ 10.9349% on the tendered amount of Rs.5,60,38,923/- which come out of Rs. 4,99,11,121/- for the Work of Interiors and allied works of Museum Building at Bindu Sarovar Complex, Siddhpur Dist:Patan Gujarat.

On terms and conditions in the tender documents issued to you, duly filled in tender and issuing of letter of invitations, instruction, article of agreement, conditions of contract, drawings, specifications, schedule of quantities and letters mentioned above under reference shall form part of the contract agreement:

1. Scope of work :
The detailed scope of work shall be as per the tender documents specifications and requirements
2. Contract Value :
The quantities shown in the bill of quantities are approximate, i.e. the rates are firm and are independent of quantity.

Total Tendered Value
Rs.5,60,38,923/-

(-) Rs. 61,27,802/- Rebate (10.9349% on tendered amount)

Amount of work order

Rs. 4,99,11,121/-

(Rupees in words Rs. Four Crore Ninty nine Lac Eleven thousand One Hundred twenty one only)

Tourism Corporation of Gujarat Limited
(A Govt. of Gujarat Enterprise)
Block No. 16/17, 4th Floor, Udyog Bhawan, Sector 14, Chandkheda, Gandhinagar, Ahmedabad - 382 016.
Phone : 91-79-23222522, 23222144, 23222002 Fax : 91-79-23222508
Website : www.gujarat-tourism.com




169

8. Jurisdiction:
The jurisdiction of this contract will be the competent court at Gandhinagar, Gujarat only.

LOI and the Tender Documents terms and conditions are part and parcel of the agreement and contract.

Please acknowledge the receipt of this letter and acceptance of the order herein by returning the copy enclosed duly signed and stamped by an authorized signatory / owner.

Thanking you,


Manager Project,
TCGL

We acknowledge and accept this agreement and contract with all the terms and conditions mentioned therein.

For, THE CONTRACTOR

Sign: Name: M/s. P.C.Snehal Construction Co,
9th floor, City Centre, Nr.Swastik Cross Road,
Navarangpura,
Ahmadabad

Gandhinagar.
16/02/2013



FORM NO.3 (A)
(Referred to in Rule No.5B (II))

WORKWISE DETAILS OF WORK COMPLETED OR IN PROGRESS BY THE CONTRACTOR

1 Name of Contractor : P. C. Snehal Construction Co.
9th Floor, City Centre, Navrangpura, Ahmedabad - 380 008

2 Name of Work : Infrastructure & Destination Development of Bindu Sarovar
Temple Complex and surrounding: part 1 at Siddhpur, Dist.
Patli (A Civic Amenities Non Commercial and Public Utility
Additional Infrastructure Project)

3 Estimate cost of work put to tender : Rs.12,00,00,000 (Item Rate Tender Prepared by CEPT)

4 Tended Amount : Rs.10,80,36,752.00 (Revised Amount Rs.13,85,11,025)

5 Date of starting the work : 01.02.2010

6 Date of completion of the work
(As per contract agreement) : 01.02.2011

7 Actual date of the completion of
the work : 30.01.2013

8 Amount of work done : Rs.13,84,75,101/-

For, P. C. Snehal Construction Co.

Partner



9 State whether the details as above
given by the contractor are correct? : Yes

10 State whether the details as above
given by the contractor are correct,
if not, state as to what is the correct
information : Yes

11 State whether the contractor has
executed the "work-in-progress"
satisfactorily as per specifications/
has completed the work satisfactorily
as per specification if not give the
correct position of the work. : Contractor had carried out the work satisfactory as per
specification. The project had executed as per the design
and direction of CEPT. The execution was carried out
under the supervision of Tourism Corporation Gujarat
Ltd. - CEPT

12 Any other remarks.

Place: Gandhinagar
Date: 14/2/13

Executive Engineer
Tourism Corporation of Gujarat Ltd.
Gandhinagar

For, P.C.Snehal Construction Co.

Authorised Signatory

FORM NO.3 (A)
(Referred to in Rule No.5B (II))

WORKWISE DETAILS OF WORK COMPLETED OR IN PROGRESS BY THE CONTRACTOR

1 Name of Contractor : P. C. Snehal Construction Co.
9th Floor, City Centre, Navrangpura, Ahmedabad 380 008

2 Name of Work : Development of Tourist Facilities at Dakor, Package II Dist. Kheda
Dist. Kheda (A Civic Amenities Non Commercial and Public Utility
Additional Infrastructure Project)

3 Estimate cost of work put to tender : Rs.15,13,92,501.00

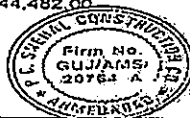
4 Tended Amount : Rs 13,92,53,488.00

5 Date of starting the work : 05.04.2013

6 Date of completion of the work : 06.07.2014
(As per contract agreement)

7 Actual date of the completion of : Work In Progress
the work

8 Amount of work done : Rs. 1,69,44,482.00



For, P. C. Snehal Construction Co.
Partner

9 State whether the details as above : Yes
given by the contractor are correct?

State whether the details as above : Yes
given by the contractor are correct,
if not, state as to what is the correct
information

State whether the contractor has : Contractor is carrying out the work satisfactory as per specification
executed the "work-in-progress"
satisfactorily as per specifications/
has completed the work
satisfactorily as per specification if
not give the correct position of the

Any other remarks. : -

Place: Gandhinagar
Date: 5/12/2013

For, P.C.Snehal Construction Co.

Authorised Signatory

Executive Engineer
Tourism Corporation of Gujarat Ltd.
Udyog Bhavan,
Gandhinagar.

68. I also rely on the judgment of the Hon'ble Rajasthan High Court in case of Ram Chandra Kasliwal v/s State Of Rajasthan And Ors. reported in 2004 SCC OnLine Raj 355, wherein it has been held that tourism is necessary for the economic development of a region.

69. In view of the above, I find that the assessee is eligible for exemption from payment of service tax under serial no. 12(a) of notification no.25/2012-ST dated 20.06.2012 as the function performed by the service recipient viz. the government authority, has executed its function as enshrined in schedule 12 to the Indian Constitution read with Article 243W.

Sr. No. 9 &10: Services provided to RIDCOR in respect of work pertaining to Multi Level Parking at Gandhi Maidan, Jodhpur&Underground parking at Hathiwala Park, Udaipur.

70. The assessee had stated that the Work was awarded by the Road and Infrastructure Development Company of Rajasthan Limited ('RIDCOR') under Letter of Acceptance No RIDCOR/PRJ/TEC/CCO-5 & 7/2013 dated 26.7.2013 and No RIDCOR/PRJ/TEC/CCO-5 & 7/2013 dated 30.9.2013 for construction of multi level parking/underground parking for the utility of general public, respectively. Hence, they were not liable to pay service tax. It had been claimed that RIDCOR is a Government Authority.

ALLEGATION

71. In the instant case, it appeared from the documents available that RIDCOR is a joint venture of the Government of Rajasthan and M/s IL&FS. Both of them are having 50% equity. The Government does not have a participation of more than 90% by way of equity or control in RIDCOR. Accordingly, it appeared they do not fall with the ambit of 'Government authority'. Hence, it appeared that they would not be entitled to the exemption benefit under clause 12A (a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

DISCUSSION:

72. I have called for F.No. STC/04-27/Prev./Gr.V/P.C. Snehal Construction/2015-16 of the Preventive Section of erstwhile Central Excise Commissionerate, Ahmedabad North and gone through the records of investigation carried out by the Preventive Wing. From the records I find that the exact services under consideration in this Show Cause Notice viz. Services provided to RIDCOR in respect of work pertaining to Multi Level Parking at Gandhi Maidan, Jodhpur & Underground parking at Hathiwala Park, Udaipur, were examined during the course of the investigation by the Preventive Wing for the period from 2011-12 to 2015-16. The assessee had stated that the Work was awarded by the Road and Infrastructure Development Company of Rajasthan Limited ('RIDCOR') under Letter of Acceptance No RIDCOR/PRJ/TEC/CCO-5 & 7/2013 dated 26.7.2013 and No RIDCOR/PRJ/TEC/CCO-5 & 7/2013 dated 30.9.2013 for construction of multi level parking/underground parking for the utility of general public, respectively.

73. M/s. RIDCOR had undertaken the work of constructing "parking" from Rajasthan Government and submitted copy of tender / agreement. The same has been sub-contracted to M/s P.C.Snehal.

74. As per Agreement No. F.55/CE/DLB/12-13/RIDCOR/Parking Project/Udaipur/15096 dated 27.09.2013 issued by the Joint Secretary, Government of Rajasthan to M/s. RIDCOR for underground multi level parking, Hathivala Park, the project had been awarded to M/s. RIDCOR at the estimated cost of Rs.14,37,51,602/-.

75. Another agreement No.F.55/CE/DLB/12-13/RIDCOR/Parking Project/Jodhpur/1021 dated 05.09.2013 issued by the Deputy Secretary, Government of Rajasthan to M/s. RIDCOR for underground multi level parking at Gandhi Park, Jodhpur, the project had been awarded to M/s RIDCOR at the estimated cost of Rs.11.57 crore.

76. It was found that the services provided to the Government of Rajasthan by principal contractor i.e. RIDCOR is exempted as per sr. No. 12 of the Mega Exemption notification



25/2012 S.T. which is reproduced as under:

12. *Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –*

(a) *a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

(b) *a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*

(c) *a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or*

(d) *canal, dam or other irrigation works;*

(e) *pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*

77. RIDCOR had carried out projects related to public amenity i.e. parking lots used by Government of Rajasthan. Copy of works order issued by Govt. of Rajasthan which were predominantly used for purpose other than commerce and industry, was submitted during the course of preventive investigation.

78. M/s. P.C. Snehal has claimed exemption under Sr. No.29 (h) of Notification No. 2512012-ST dated 20.06.2012 which is reproduced as below:

(h) Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.

78.1 M/s. P C Snehal had provided the works order issued by RIDCOR with reference to original contract. On perusal of the same, it appeared that the works undertaken by RIDCOR from Govt. of Rajasthan had been as such sub contracted to M/s. PC Snehal. As the principal works contract by RIDCOR is eligible for exemption being provided directly to state government, therefore sub contractor will also enjoy exemption in the light of Sr.no. 29(h) of the said Notification. Thus, it appeared that the construction of parking place by M/s. PC Snehal is exempted from Service Tax.

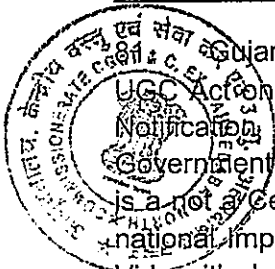
79. In view of the above, I hold that the assessee is eligible for exemption under Sr. No. 12(a) and 29(h) of Notification No. 25/2012-S.T., dated 20.6.2012. Lastly, it is pertinent to note that since the matter was in the knowledge of the department during the course of issuance of the previous Show Cause Notice, and the matter was examined during the course of the investigation by the Preventive Wing for the period from 2011-12 to 2015-16, suppression cannot be invoked again with respect to this issue.

Sr. No 11: Works Contract services provided to the Registrar, Gujarat Vidyapith

80. The assessee had stated that they had been issued Work Order No.s 203 and 204, both dated 17.12.2014 by the Registrar, Gujarat Vidyapith for construction of toilet blocks of GF, FF and SF of Adivasi Sansodhan and Talim Kendra. They further stated that Gujarat Vidyapith is a deemed university, founded and governed by the University Grant Commission, under the Union Ministry of Human Resource Development, New Delhi. They had also stated that it was founded by Mahatma Gandhi and therefore, was a historical monument. Accordingly, they were liable for the exemption under Notfn No. 25/2012-ST dated 20.6.2012, as amended.

ALLEGATION:

Gujarat Vidyapith received the status of a deemed university under the UGC Act on July 16, 1963 [University established under Section 3 of the UGC Act, 1956 vide Notification No. F.10-20/62-U2 of Govt. of India]. There is no evidence to show that the Government has 90% or more of participation having equity or control over Gujarat Vidyapith. It is a not a Central/State University. Further, Gujarat Vidyapith is not in the list of monuments of national importance in the website of the Archaeological Survey of India. Accordingly, Gujarat Vidyapith does not fall within the ambit of 'Government authority'. The assessee has contended that the Adivasi Sansodhan and Talim Kendra is a Govt. of Gujarat Initiative and hence it is a



Governmental Authority in terms of para 2(s) of notification 25/2012-ST; and therefore it is eligible for exemption under serial no. 12(a) of notification 25/2012-ST.

DISCUSSION:

82. However, I disagree with the contention of the assessee, in as much as even if the Adivasi Sansodhan and Talim Kendra is a Govt. of Gujarat Initiative, the services of constructing toilet blocks have been provided to Gujarat Vidyapith which is not a Government Authority. Therefore the services provided to this institution is taxable under Service Tax and the assessee is not entitled to exemption under clause 12A (a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended. In view of the above, I confirm the demand of Service Tax amounting to Rs.31,777/-, on the services provided by the assessee to Gujarat Vidyapith.

Sr No 12 & 13: Works Contract service provided to M.S. University

83. The assessee had been issued a Letter No CD/2276 and Work Order No CD/2017 in December 2016 by the Maharaja Sayajirao University of Baroda for renovation of Ladies Hostel and New Building in the University Campus and construction of multipurpose indoor stadium. Maharaja Sayajirao University is a deemed university, founded and governed by the University Grants Commission, under the Union Ministry of HRD, New Delhi. The University is more than 100 years and is a historical monument.

ALLEGATION:

84. No evidence was shown by the assessee that the Government has 90% or more of participation having equity or control over the University. Further, the University is not in the list of monuments of national importance in the website of the Archaeological Survey of India. Therefore, it appeared they do not fall with the ambit of 'Government authority'; and hence, it appeared that they would not be entitled to the exemption benefit under clause 12A (a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

DISCUSSION:

85. M.S. University offers undergraduate, graduate, post graduate and doctoral programs. It is funded and governed by the University Grant Commission under Union Ministry for Human Resources Development at New Delhi. The M.S. University of Baroda was established under the The Maharaja Sayajirao University of Baroda Act, 1949. M.S. University is an "University" in terms of Section 2(f) and 3 of University Grants Commission Act, 1956. The University Grants Commission Act, 1956 enacted by the Parliament came into force from 5th November, 1956. Section 2(f) and 3 of University Grants Commission Act, 1956 provided as under.

"2(f): "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

3: The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a university, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2."

M.S. University is in control of the Government as it is established under a separate act of own. Para 2(s) of the Notification 25/2102-S.T., dated 20.6.2012, defines "Governmental Authority" as under:

"Governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of



the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

87. I hereby rely on the judgment of Honorable High Court of Patna in case of Sharpoorji Paloonji & Pvt. Ltd. Vs. Commissioner, Customs, Central Excise and Service Tax, Patna [2016-TIOL-556-HC-PATNA-ST] held as under:

"As per definition Governmental Authority means an authority or board or any other body set up by an Act of Parliament or State Legislature is a Government Authority. The authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to condition of 90% or more participation by way of equity and control to carry out any functions entrusted to a municipality under Article 243W of the Constitution. Construction activity undertaken is exempt from payment of service tax in terms of notification no. 25/2012-ST dated 20.06.2012."

88. In view of the above, I conclude that M.S. University clears falls within the ambit of the above definition, in as much as it has been set up by an Act of the Parliament and is also in control of the Government. Further the activity of for renovation of Ladies Hostel and New Building in the University Campus and construction of multipurpose indoor stadium, is not meant for commercial or business purpose; or with an intent to earn profit. Therefore I hold that the assessee is eligible for exemption from payment of service tax under serial no.12 of notification no. 25/2012-ST, dated 20.6.2012, on the services provided to M.S. University.

Sr No 14: Mahagujarat Medical Society Building Construction

89. The assessee had stated that a Work Order dated 21.1.2015 was issued by the Mahagujarat Medical Society. Since the services were provided to the local authority and the agreement was entered into before 01.03.2015, they were exempted from payment of service tax under clause 12A(a) and (b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

ALLEGATION:

90. In the instant case, on going through the letter submitted by the assessee, it was seen that the date of Work Order is 25.3.2015 and not 21.1.2015, as claimed by the assessee. It, therefore, appeared that the agreement was entered after 1.3.2015. Accordingly, it appeared that the benefit is not available to the assessee under the proviso to clause 12A to Notfn No 25/2012-ST dated 20.6.2012, as amended.

DISCUSSION:

91. The contention of the assessee is that their activity is not meant for commerce or business with intention to earn profit. They stated that they are eligible for exemption from payment of service tax under serial no.12(c) of notification no. 25/2012-ST. It had been alleged in the show cause notice that the exemption is not applicable as it is after 1/3/2015 but the Ld. Commissioner had failed to consider that the same is effective from 01.03.2016 and therefore the exemption is not applicable.

92. I find that the contention of the assessee is not based on facts. Sr. No. 12 (c) of the Notification 25/2012-S.T., stipulates as under:

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

93. Plain reading of the above condition implies that in order to avail exemption, the services have to be provided to Government, a local authority or a Governmental authority.



However, in this case, Mahagujarat Medical Society, does not fall under any of the above category. The contention of the assessee that their activity is not meant for commerce or business with intention to earn profit, is not substantiated by facts, though it is irrelevant for the sake of claiming exemption from payment of Service Tax.

94. Further, the exemption was withdrawn for the period from 1.4.2015 to 29.2.2016, however vide Notification No. 09/2016-Service Tax, Dated: March 01, 2016, which amended Notification 25/2012-S.T, the exemption was restored subject to conditions, one of which was that the contracts should have been entered prior to 1.3.2015). This means that even if the contracts executed after 1.3.2016, then contract should have been entered into prior to the 1st March, 2015.

95. From the records of the case, I find that that the "Civil and Allied works for Thakorbhai (U.G.Patel) Global Ayurvedic Hospital for Mahagujarat Medical Society, Nadiad", was allotted to the assessee by M/s. Mahagujarat Medical Society, only on 25.03.2015, and not on 23.1.2015, as claimed by the assessee.

96. Therefore, in view of the above, I hold that the benefit of exemption is not available to the assessee under the proviso to clause 12A to Notfn No 25/2012-ST dated 20.6.2012, as amended.

Sr No 15: M/s. Rean Watertech Pvt. Ltd (Income)

97. The assessee had stated that the Work Order No 1305/NIT-12/D & M/MPJNM/2015 was issued by the Madhya Pradesh Jal Nigam Maryadit (a Government of Madhya Pradesh Understanding) for Water Supply System Balaghat project. The Works fall under the clauses 12(e) to the Notfn No 25/2012-ST dated 20.6.2012, as amended and therefore, they were eligible for the exemption.

ALLEGATION:

98. An observation was raised on 11.10.2019 to the assessee seeking certain clarification in respect of the income of Rs 2,00,00,000/- earned in 2015-16 and Rs 5,00,25,700/- in 2016-17 from M/s. Rean Watertech Pvt Ltd. which was shown in the note to the Financial statements for these years. The assessee under their reply dated 23.10.2019 have stated that they had been asked to proceed for carrying out the work by Madhya Pradesh Jal Nigam Maryadit (a Govt of Madhya Pradesh Undertaking) for Water Supply System project at Balaghat. A letter No 1305/NIT-12/D&M/MPJNM/2015 dated 26.05.2015 issued by Madhya Pradesh Jal Nigam Maryadit to M/s. Bengal Tools Ltd & the assessee, was submitted. It appeared that the assessee had failed to provide documents and reasons for receiving the income from M/s Rean Watertech Pvt Ltd. Instead, they had cited the Work Order of Madhya Pradesh Jal Nigam Maryadit issued to them and M/s Bengal Tools Ltd. It appeared that when income had been shown as received from M/s Rean Watertech Pvt Ltd, there is no link established between the income and the Work Order of Madhya Pradesh Jal Nigam Maryadit. Accordingly, it appeared that the assessee had failed to provide evidence in terms of documents/Work Order for receipt of income from M/s Rean Watertech Pvt Ltd. Accordingly, it appeared that the exemption claimed by them under Notfn No 25/2012-ST dated 20.6.2012, as amended would not be eligible and the same was denied to the assessee.

DISCUSSION:

99. Now, the assessee vide their written submission dated 17.6.2020 and 03.07.2020 has submitted the relevant documents pertaining to the work allotted to them by M/s. Rean Watertech Pvt Ltd. They have also made oral submissions regarding the same at the time of the two personal hearings held on 15.6.2020 and 20.7.2020.

I find that the assessee is a sub-contractor of the contract accorded by Madhya Pradesh Jal Nigam, owned by the Govt. of Madhya Pradesh.

The Madhya Pradesh Jal Nigam Maryadit (MPJNM) (A Govt. of Madhya Pradesh



Undertaking) awarded the contract for Engineering, Construction, Testing, Commissioning, trial run and operation and maintenance of various components of combined Devasarra- Bhatara-Dhuti-Piparihari Multi Village District Balaghat Water Supply Schemes District Balaghat to M/s. Bengal Tools Ltd. & M/s. PC Snehal Construction Company JV, vide the letter of acceptance dated 16.07.2014. The work for the project was then subcontracted to M/s. Rean Watertech Pvt. Ltd. by Bengal Tools Ltd. through letter dated 28.02.2015, who further sub contracted the work to PC Snehal Construction Company. Copies of all 3 communications were submitted by the assessee.

100.2. As per the Work Order No.12/D&M/MPJNM/2014-15, dated 16.7.2014, M/s. Madhya Pradesh Jal Nigam Maryadit had entered into contract with the Government for Rural Water Supply Schemes on turn-key basis. The assessee has produced a copy of letter of MPJNM addressed to M/s. Bengal Tools Ltd. and P.C. Snehal Const. Co., a joint venture, wherein this Work Order has been referred to. From this letter, it comes out clearly that the original agreement was entered into prior to 1.3.2016. It is also clearly evident that the entire work was allocated by the Government to Madhya Pradesh Jal Nigam who in turn, allotted it to M/s. Bengal Tools Limited and M/s. P.C. Snehal Construction Co., a Joint Venture. Further, M/s. Bengal Tools Ltd sub contracted it to M/s. Rean Watertech P. Ltd.. M/s. Rean Watertech P. Ltd finally sub contracted it to M/s. P.C Snehal Construction Company. The relevant letters are scanned and reproduced herewith for ready reference-

MADHYA PRADESH JAL NIGAM MARYADIT
(A Govt. of Madhya Pradesh Undertaking)

Regd. & Corporate Office: "D" Wing, 2nd Floor, Vinodhyachal Bhawan, Bhopal - 462004 (M.P.)

Phone: 0755-2578874, 2578033-38; Fax: 0755-2570873
e-mail: mpjalnigam@gmail.com, Website: www.mpjalnigam.co.in
CIN: U41000MP2012SO028728

No. 1305 /NIT-12/D&M/MPJNM/2015

Bhopal, Dated 26/05/2015

To, ✓
M/s. Bengal Tools Ltd & M/s. P.C. Snehal Construction Company (JV)
Structural Tower, 7th Floor,
686, Vaidhampur, E.M. By pass
R. B. Connector Junction
Kolaria - 700107

Subj: Notice to Proceed for the work under NIT No. 12/D&M/MPJNM/2014-15 dated 16.07.2014 "Engineering, construction, testing, commissioning, trial run and operation and maintenance of various components of combined Devasarra- Bhatara-Dhuti-Piparihari Multi Village Rural Water Supply Schemes District Balaghat (M.P.) for bringing treated water from the Source Wainkanga River, Block - Balaghat, District - Balaghat to various villages in Single Package on Turn-key job basis including trial run and running and maintenance of the entire scheme for 10 years."

Ref: Agreement No.01/2015-16 dated 26.05.2015 under NIT No. 12/D&M/MPJNM/2014-15 dated 16.07.2014

Consequent to the signing of the agreement by your authorized signatory Mr. Rishi Arora this Notice to Proceed is being issued for the work under NIT No. 12/D&M/MPJNM/2014-15 dated 16.07.2014 "Engineering, procurement, construction, testing, commissioning, trial run and operation and maintenance of various components of combined Devasarra-Bhatara-Dhuti-Piparihari Multi Village Rural Water Supply Schemes, District - Balaghat (M.P.) for bringing treated water from the Source Wainkanga River, Block - Balaghat, District Balaghat to various villages in Single Package on Turn-key job basis including trial run and maintenance of the entire scheme for 10 years." at Rs. 147,75,00,000/- (Rupees One Hundred and Fourty Seven Crores Seventy Five Lakhs Only) under the agreed terms and conditions. The period of completion of work is Twenty months including rainy season from the date of issue of work order. A copy of agreement is enclosed herewith for your record.

Thanking you,

Yours truly,

(Ashwini Kumar Rai IAS)
Managing Director
Madhya Pradesh Jal Nigam Maryadit
Bhopal

Encl: As above
Encl. No. 1306 /NIT-12/D&M/MPJNM/2015

Bhopal, Dated 26/05/2015

Copy to-

1. Principal Secretary, Govt. of M.P., P.H.E. Department, Mantalay Bhopal.
2. Engineer-in-Chief, M.P. P.H.E. Department Bhopal, Satpura Bhawan, Bhopal.
3. Chief Engineer, P.H.E. Department Jabalpur Zone, Jabalpur.
4. Superintending Engineer, P.H.E. Zone, Project Circle, Chhindwara.
5. General Manager, PU, M.P. Jal Nigam Maryadit Jabalpur, with a copy of Agreement No 01 dated 26.05.2015 for further necessary action.
6. Executive Engineer, P.H.E. Division Balaghat.

(Managing Director)
Madhya Pradesh Jal Nigam Maryadit



Ref :- BTL/MPJNM/REAN/14-15

Date :- 28.02.15

M/s Raan Watertech Pvt. Ltd.
 7th Floor, Shree Tower,
 606 Annapurna,
 E.M. Bypass - R.B. Connector Junction
 Kolkata-700107

Kind Attn :- Mr. Hrush Arora

Sub :- Letter of Acceptance for the work under NIT NO. 2/2014 & MPJNM/14-15 dated 16.07.2014 of Madhya Pradesh Jal Nigam Maryadi. (MPJNM) for engineering, procurement, construction, testing, commissioning, trial run and operation & maintenance of various components of combined Damsara-Bhatara-Dhuti-Piparhari Mill Village District Balaghat Water Supply Schemes, for bringing treated water from the Source Walganoni River, Block Balaghat, District Balaghat to various Villages in Single Package on Turn-key Job basis, including trial run and running and maintenance of the entire scheme for 1 year.

Dear Sir,

We are pleased to inform you that your proposal for execution of above mentioned project on back to back basis has been accepted by us and is being put for Acceptance subject to following terms and conditions :-

1. Project Value :- Rs. 1,44,79,60,000/- (Rupee One Hundred Forty Four Crore Seventy Nine Lakh Fifty Thousand Only) in the value includes all kind of taxes & duties applicable or will be applicable in future (if any).
2. Scope of Work :- Your scope of work shall include total works as per the specifications mentioned and as defined in the Tender Documents /NIT/ Drawings etc. furnished by BTL to MPJNM at the time of bidding the Work. However, a contract agreement will be entered into between BTL and REAN shortly to specify detail scope of work.
3. Taxes and Duties :- As mentioned above contract value is inclusive of applicable taxes and duties of all kind. GST, SWCT, etc. as not applicable, rate shall be deducted from your invoice/payment and certificate shall be issued.
4. Period of Completion :- Shall be as per Above Tender Specification.
5. Payment Terms :- Shall be as per above tender Specification on back to back basis. We will release payment only after receipt from MPJNM after deducting all expenditure and cost incurred by us for this project within 7 days of receipt of payment from MPJNM.

Yours faithfully,
 For Bengal Tools Ltd.
 Hrush Arora
 Authorised Signatory

Liquidated Damages :- shall be on back to back basis. If MPJNM impose on BTL the same shall be passed on to REAN in full.

Insurance & Bank Guarantee Cost :- all types of cost & expenses if any incurred by BTL on behalf of REAN shall be recovered from REAN.

A detailed contract agreement will be entered into by and between BTL and REAN to specifically define liabilities, duties and other terms and conditions of execution, payment, etc. which will be binding to both.

Thanking you,
 For Bengal Tools Ltd.
 Hrush Arora
 Authorised Signatory





WO No. :RWPL/111

Date : 28.02.2015

To,
P. Snehal Construction Pvt Ltd,
G F: Praveesh Apartment, 10, MahadevNagar Society
Nr. S P Patel Stadium Road,
Naranpura,
Ahmedabad - 380 014
Gujarat

Sub: - Name of Work - Engineering, Construction, testing, commissioning, trial run and operation and maintenance of various components of combined Devsarra - Bhatera - Dhulipiparjari Multi Village Rural Water Supply Scheme District - Balaghat (M.P) for bringing treated water from the source Wainanga River, Bilbeli, Balaghat, Dist. Balaghat to various villages in single Packages on Turn-key job basis including trial run and running and maintenance of the entire scheme for 10 years

Dear Sir,

We are pleased to offer you the Work Contract of excavation, lowering, laying water testing, commissioning etc complete for Pipes with specials, valves etc for our project. The items are as under and the quantity shall be paid to you on back to back basis. This work contract includes, bringing necessary, machineries, tools, tackles, Transport, Road breaking Excavation bedding machine & certain consumable materials required to execute the said work contract.

Terms & Conditions

1. Project Value :-12,45,40,455/- (Rupees Twelve Crore Forty Five Lacs Fourty Thousand Four Hundred Fifty Five Only. This Value includes all kind of taxes & Duties applicable or will be applicable in future (if Any) The work shall be completed in all respect within 18 months.
2. Scope of work:- Your Scope of work shall include total works as per the specifications mentioned and as defined in the Tender Documents/NIT-Drawing, etc furnished by BTL to MPJN at the time of bidding the works. However a contract agreement will be entered into between RWPL and PCSC shortly to specify details scope of work
3. Taxes & Duties : As mentioned above contract value is inclusive of applicable taxes and duties of all kind, TDS, WCT, etc as per applicable law shall be deducted from your invoice/payment and certificate shall be issued.
4. Period of Completion :- Shall be as per above Tender Specification.

Rean Water Tech Pvt. Ltd. (CIN - U41000WV2014PTC104591)

Registered Office:
1412, 1st Floor, DLS Scheme 3-MP, Ram Teen
Kajapur, Vadodra - 390014, Gujarat
Phone: +91 79 42682201, FAX: +91 79 42682202
Email: info@reanwater.com

Corporate Office: 23/32, Dabholi Railway Road,
Vadodra - 390002, Gujarat
Zonal Office: 2179, 3rd Floor, Corporate Tower, G3 Road
Hamburabad 64, Vadodra - 392016, M.P., INDIA
Phone: +91 793 4531101

5. Payment Terms :- Shall be as per above Tenders Specification on back to back basis. We will release payment only after receipt from MPJNM after deducting all expenditure and cost incurred by us for this project, within 7 days of receipt of payment from MPJNM.
6. Liquidated Damages : shall be on back to back basis. If MPJNM imposed on Rean the same shall be passed on to PCSC in toto.
7. Insurance & Bank Guarantee Cost :- all types of cost & expenses, if any, incurred by REAN on behalf of PCSC shall be recovered from PCSC
8. A detailed contract Agreement will be entered into by and between REAN and PCSC to specifically define liabilities, duties and other terms and condition of execution, payment, invoicing etc which will be binding to both.
9. Billing Address: M/s P.C. Snehal Construction Co G F: Praveesh Apartment, 10, MahadevNagar Society Nr. S P Patel Stadium Road
10. Excavation in Hard rock & RCC Road is not included in your mte. Asphalt road, WBNI & all other strata excavation is included in above rate.
11. Water will be provided by company free of cost for testing and regarding excavation during course of execution if exlating pipe breakage is observed, it will be your responsibility to make it good by required reworking at your own cost. Necessary all materials will be provide to you at work place free of cost.
12. All the required machineries like excavator, Hydra with its operator etc. will be arranged by you.

Thanking You

Yours Truly,

REAN WATER TECH PVT LTD

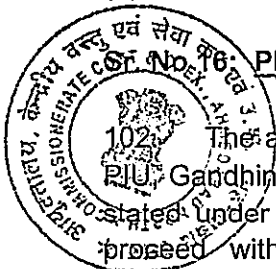
Authorized Signatory

101. Therefore, in view of the above discussion, I find that as per entry 29(h) of Notification 25/2012, the assessee is eligible for exemption for payment of Service Tax under serial no.12 (e) read with 29(h) of notification no.25/2012-ST dated 20.06.2012.

PIU, Dediypada

The assessee had stated that they had received work, awarded by the Chief Engineer, PIU, Gandhinagar for upgradation of community health centre at Dediypada. They had further stated under their letter dated 23.10.2019 that the PIU Gandhinagar had issued a letter to proceed with the work under their letter No PIU/ACs/CHCI/Narmada/ 3916/2017 dated 22.9.2017. It was stated that they were eligible for the exemption under clause 12A(b) to Notfn No 25/2012-ST dated 20.6.2012, as amended.

103. In the instant case, on going through the letter dated 22.9.2017, it appeared that PIU, Gandhinagar had asked the assessee to proceed only on 22.9.2017. It, therefore, appeared that



the agreement was entered after 1.3.2015. Accordingly, it appeared that the benefit was not available to the assessee under the proviso to clause 12A to Notfn No.25/2012-ST dated 20.6.2012, as amended.

104. The contention of the assessee is that the provisions of serial number 12A of notification no.25/2012-ST, inserted vide notification no.9/2016-ST (a) (iv), with effect from the 1st March, 2016, was not valid after 30.06.2017. The work order issued on 22.09.2017 shall have to be governed by Central Goods and Service Tax Act, 2017 and State Goods and Service Tax Act, 2017. Therefore disallowing of exemption in respect of work of Project Implementation Unit, Gandhinagar is void and *ultra vires*.

105. I find that the assessee has tried to imply that the work order issued on 22.09.2017 cannot be covered under the erstwhile Finance Act, 1994, which has been rescinded on implementation of Central Goods and Service Tax Act, 2017 and State Goods and Service Tax Act, 2017. They have contended that the said demand ought to have been raised under CGST Act, 2017 and not the Finance Act, 1994. Therefore disallowing of exemption in respect of work of Project Implementation Unit, Gandhinagar under the Finance Act, 1994, is not proper under the existing law. However, on going the copies of the Sales Register and the Trial Balance for the period from April 2017 to June 2017, submitted by the assessee before the auditors, I find that the amount of Rs.51,26,450/- was already booked by the assessee during this period. Therefore, the contention of the assessee that the demand ought to have been raised under the CGST Act, 2017, holds no ground. Further the assessee has not brought forward any evidence to show that the amount received by them did not pertain to the period 1.4.2015 to 29.2.2016, prior to the amendment Notification No. 9/2016-S.T., dated 1.3.2016. They have also not brought forward any explanation as to why the service itself could be exempted, even otherwise.

106. Therefore, in view of the above, I find that the assessee was not eligible for exemption under Notfn No.25/202-ST dated 20.6.2012, as amended vide Notification 9/2016, dated 1.4.2016.

107. I hereby summarise the eligibility of exemption under Notfn No 25/2012-ST dated 20.6.2012, as amended, as under:

107.1 I hereby allow exemption from payment of Service Tax, under Notfn No 25/2012-ST dated 20.6.2012, as amended, on the income for the following projects/work orders tabulated below and thereby drop the demand amounting to Rs. 4,15,49,526/-.

TABLE-B

Sr. no. of Table A	Project/work Order	Project Income				Total Service tax payable
		2014- 15	2015-16	2016-17	2017-18 (April-June 2017)	
1	AMC-Auditorium (Rajpath) Income.	70794297	93846078	106977309	0	15361781
2	AMC Tagore Hall Income Account	5827211	1155295	232220	232220	670199
3	Gujarat Tourism Dakor (PCK-II)	27624676	22970644	21197981	0	3969940
4	Gujarat Tourism - Dakor Work	39894376	6654542	4769546	0	2644514
5	Tourism Corporation of Gujarat Ltd (JAGANA)	8949575	0	0	0	442467
6	Gujarat Tourism Museum Interior Work	0	1347764	0	0	78170
7	Gujarat Tourism - Bindu Sarovar Work	0	661518	0	0	38368
8	Tourism Corporation of Gujarat Ltd (JAGANA)	0	3911326	0	0	226857
9	RIDCOR Multi level Parking: Gandhi-Maidan	4381786	84177632	15786313	0	6046117
10	RIDCOR - Underground Parking (Hathiwala Park)	12600633	49944969	16698683	0	4521704
	AMS University	0	12937100	14744208	733171	2938240
	AMS University (Stadium)	0	0	0	7493788	449627



15	Rean Watertech Pvt Ltd (Income)	0	20000000	50025700	0	4161542
	Total	170703166	301975826	230812117	13585629	
	Service Tax payable					41549526

107.2 I hereby deny exemption under Notfn No 25/2012-ST dated 20.6.2012, as amended, on the income for the following projects/work orders tabulated below and thereby confirm the demand amounting to **Rs. 6,14,973/-**.

TABLE-C

Sr. no. of Table A	Project/work Order	Project Income				Total Service tax payable
		2014- 15	2015-16	2016-17	2017-18 (April-June 2017)	
11	The Registrar, Gujarat Vidyapith	630612	0	0	0	31177
14	Mahagujarat Medical Society Building	0	4368958	380157	0	276209
16	PIU, Dediypada	0	0	0	5126450	307587
	Total	630612	4368958	380157	5126450	
	Service Tax payable					614973

108. From the foregoing facts and discussions, in respect of Para No. 107.2, I find that the assessee had contravened the provisions/conditions of Notfn No 25/2012-ST dated 20.6.2012, as amended and have wrongly availed the exemption. They had not disclosed to the revenue that they were providing a taxable service falling within the definition of 'service' as envisaged under the provisions of Section 65B(44) of the Act. They had shown the consideration with respect to the said services as income in their financial records but had not shown the same consideration as receipt in their ST3 returns until the same was detected during the course of audit. It appeared that had wrongly availed the exemption of Notfn No 25/2012-ST dated 20.6.2012, as amended even though they knew they were ineligible for the exemption. They had suppressed the material facts of receiving a consideration on the services provided to them to their customers in their ST3 returns with an intent to evade the payment of service tax within the ambit of Section 65B(44) of the Act. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' in this case.

109. In view of the above, as tabulated in TABLE-C above, it was seen that the service tax totally amounting to **Rs.6,14,973/-**, and is liable to be demanded and recovered from the assessee, under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years as there is a case of suppression of facts with an intent to evade the payment of service tax. It appeared that the assessee had not paid the service tax as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. It appeared that by the act of not disclosing the amount of consideration received on account of the services provided by the said assessee and by wrongly availing the exemption benefit under Notfn No 25/2012-ST dated 20.6.2012, as amended, they had suppressed the material facts with an intention to evade the payment of service tax, as discussed above and it, therefore, appeared that the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act.

110. I rely on the case of *M/s. Mahavir Plastics versus CCE Mumbai*, reported in 2010 (255) ELT 241, wherein it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275. I also rely on the case of *Lalit Enterprises Vs. CST Chennai*, wherein it is held that extended period is evocable when

department came to know of Service charges received by appellant on verification of his accounts. I have already discussed the issue of suppression for the second time in the paras no. 46 & 47 above. The above mentioned acts of contravention of the provisions of the Finance Act and Rules framed thereunder on the part of the assessee have been committed with intent to evade payment of duty and thereby they have rendered themselves liable for penalty under Section 78(1) of the Act.


111. In view of the above, I pass the following order:

::O R D E R::

- (i) I hereby confirm the demand of Service Tax amounting to Rs.6,14,973/- (Rupees Six lakh Fourteen thousand Nine Hundred Seventy Three only), as tabulated in TABLE C above and order that the same should be recovered from them, under the proviso to Section 73(1) of the Act;
- (ii) I hereby drop the demand of Service Tax amounting to Rs. 4,15,49,526/- (Rupees Four crores Fifteen lakh Forty Nine Thousand Five hundred Twenty six only), as tabulated in TABLE-B above.
- (iii) I order that interest should be charged and recovered from them under the provisions of Section 75 of the Act on the proposed demand at (i) above;
- (iii) I impose penalty amounting to Rs. Rs.6,14,973/- (Rupees Six lakh Fourteen thousand Nine hundred and Seventy three only) on them under the provisions of Section 78(1) of the Act on the confirmed demand at (i) above;
- (vii) I give the option of benefit of reduced penalty @ 25% of the penalty if the entire amount as per point (i) is paid along with interest and the reduced penalty so determined, is paid within 30 days from the receipt of the this order; under Section 78(1) of the Finance Act, 1994.

The SCN No.STC/15-60/OA/2019 dated 11.11.2019 is hereby disposed off.




(Dr. BALBIR SINGH)
COMMISSIONER 18/08/20.
CENTRAL GST & C.EX.
AHMEDABAD NORTH.

F. No.: STC/15-60/OA/2019

Dated:18.08.2020

To

M/s P C Snehal Construction Co.,
9 floor, City Center,
CG Road, Navrangpura,
Ahmedabad 380 009

Copy to:

1. The Pr. Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Deputy/Assistant Commissioner CGST, Division-VII, Ahmedabad- North.
3. The Superintendent, CGST, AR-I, Division-VII, Ahmedabad- North.
- ✓ 4. Guard File